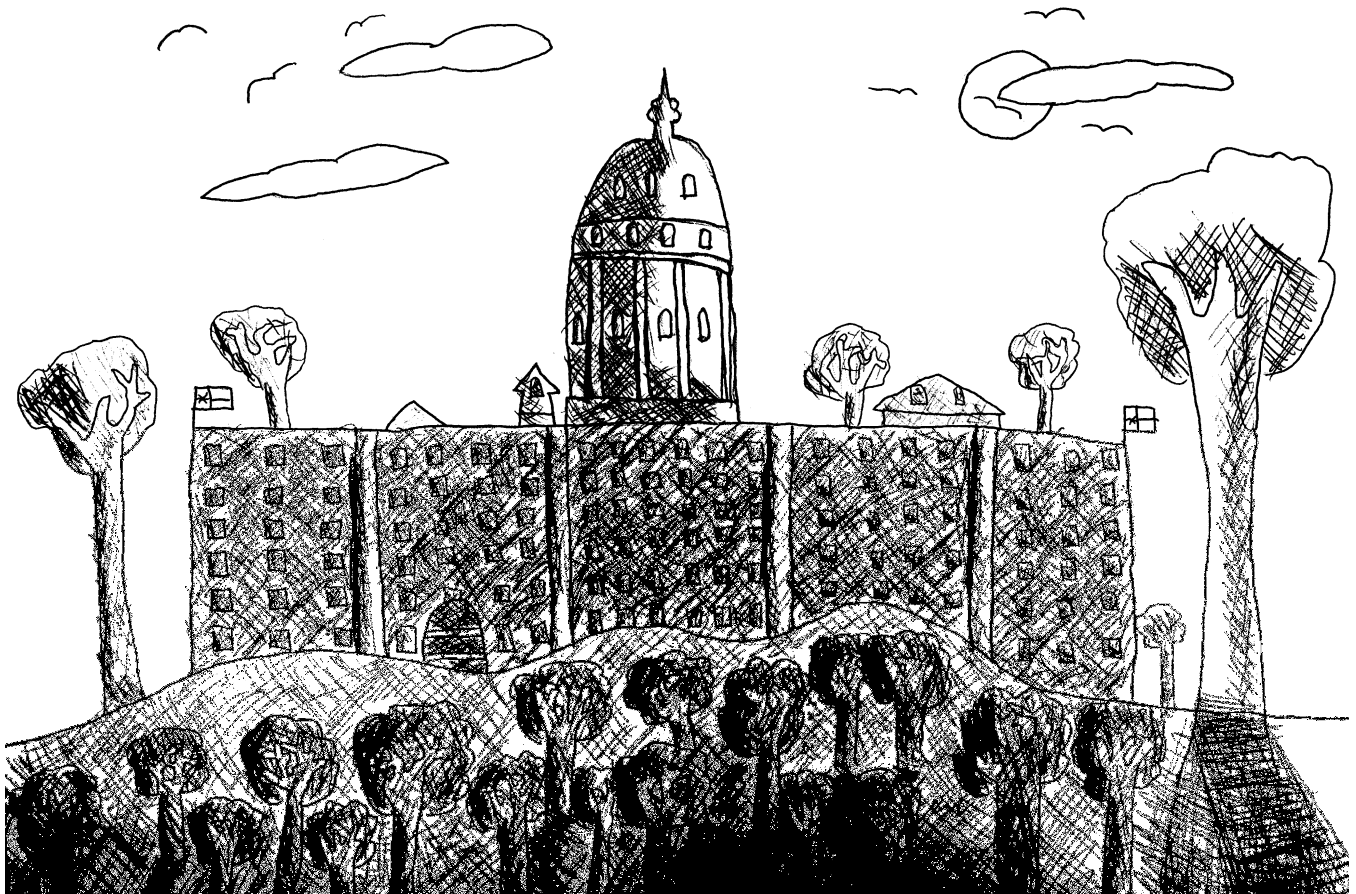

TEXAS REGISTER

Volume 31 Number 19

May 12, 2006

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order

RP 59

Relating to renewal of disaster recovery issues.

WHEREAS, Hurricane Katrina, a disaster in sister states, created an emergency disaster and emergency conditions for the people in the State of Texas beginning September 1, 2005; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in South and East Texas; and

WHEREAS, Texas Railroad Commissioner Michael Williams, in his role as leading the state's long-term relief efforts in regards to Hurricanes Katrina and Rita, requested that I issue an executive order to further aid in the disaster recovery effort in order to continue to address the emergency conditions created by the disasters; and

WHEREAS, I did issue Executive Order No. RP-54 on January 10, 2006, Executive Order No. RP-55 on February 9, 2006, and Executive Order No. RP-56 on March 10, 2006, relating to disaster recovery; and

WHEREAS, I do hereby certify that Hurricanes Katrina and Rita continue to create an emergency disaster and emergency conditions for the people in the State of Texas; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, the governor is responsible for meeting the dangers to the state and people presented by disasters; and

WHEREAS, under Chapter 418 of the Texas Government Code, the governor is expressly authorized to issue executive orders declaring a state of disaster;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew Executive Order No. RP-56 and declare a state of disaster for purposes of disaster recovery and response and direct that all necessary measures, both public and private as authorized under Section 418.015 of the Texas Government Code, be implemented to meet the disaster.

As provided in Section 418.016 of the Texas Government Code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

FURTHER, I hereby order that all actions taken pursuant to this executive order shall be preauthorized by the State Director of Homeland Security.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires by statute or it is modified, amended, rescinded, or superseded by me or by a succeeding Governor. This Proclamation shall be effective for a period of 30 days beginning on April 9, 2006.

Given under my hand this the 20th day of April, 2006.

Rick Perry, Governor

TRD-200602351

Proclamation 41-3049

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, education is the foundation for the economic and cultural future of the state of Texas and the constitutional responsibility for the development of an efficient system of public education rests with the legislature; and

WHEREAS, the current state of public school finance requires immediate action by the legislature to ensure the continued efficient and effective operation of Texas schools due to the Texas Supreme Court's conclusion that the public education finance system violates article VIII, section 1-e of the Texas Constitution and the Texas Supreme Court has given the legislature until June 1, 2006 to change the public education finance system.; and

WHEREAS, the people have placed the constitutional power to call and convene the legislature into special session in the hands of the Chief Executive Officer of the State;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call an extraordinary session of the 79th Legislature, to be convened in the city of Austin, commencing at 2 p.m. on Monday the 17th day of April 2006, for the following purposes:

To consider legislation that provides for school district property tax relief.

To consider legislation that provides for modification of the franchise tax.

To consider legislation that provides for modification of the motor vehicle sales and use tax.

To consider legislation that provides for modification of the tax on tobacco products.

To consider legislation that provides for an appropriation to the Texas Education Agency.

The Secretary of State will take notice of this action and will notify the members of the Legislature of my action.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of April 2006.

Rick Perry, Governor

Attested By: Roger Williams, Secretary of State

TRD-200602350

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0480-GA

Requestor:

The Honorable J. Keith Meredith
Freestone County and District Attorney
118 East Commerce, Room 305
Fairfield, Texas 75840

Re: Authority of a type A general law municipality to annex land outside its territorial jurisdiction (Request No. 0480-GA)

Briefs requested by May 28, 2006

RQ-0481-GA

Requestor:

The Honorable Jeri Yenne
Brazoria County Criminal District Attorney
Brazoria County Courthouse
111 East Locust, Suite 408A
Angleton, Texas 77515

Re: Application of chapter 706 of the Transportation Code, which permits the Department of Public Safety to deny renewal of a drivers license to a person who fails to appear in court (Request No. 0481-GA)

Briefs requested by May 28, 2006

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200602453
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 3, 2006



Opinions

Opinion No. GA-0424

The Honorable Eddie Arredondo

Burnet County Attorney
Burnet County Courthouse
220 South Pierce
Burnet, Texas 78611

Re: Use of county jail inmate labor on projects for nonprofit organizations (RQ-0406-GA)

SUMMARY

The phrase "work program" as used in article 43.101(a) of the Code of Criminal Procedure refers to a county jail industries program or other work program that a county has established under article 43.10 of the Code of Criminal Procedure or section 351.201 of the Local Government Code. A sheriff may operate a work program only as authorized by articles 43.09 and 43.10, Code of Criminal Procedure, and section 351.201, Local Government Code. Accordingly, defendants who volunteer for a work program under article 43.101 may perform work or produce goods for a nonprofit organization only if the organization complies with article 43.10(4) or section 351.201(b)(3)(B). Conversely, a sheriff may not "use jail inmate trustees on . . . projects . . . for nonprofit organizations" except through a work program operated consistently with article 43.09 or 43.10 or a county jail industries program operated consistently with an order entered under section 351.201.

Opinion No. GA-0425

The Honorable Norma Chavez
Chair, Committee on Border and International Affairs
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether the state or its political subdivisions may regulate international border crossings by persons under the age of 18 years, or whether the state may regulate the conduct of persons under the age of 18 years who are at or near an international border (RQ-0407-GA)

SUMMARY

The state or its political subdivisions may not regulate international border crossings by persons under the age of 18 years. The state and its political subdivisions, however, may restrict persons under the age

of 18 years from being in Texas areas near the Texas-Mexico border by creating a narrowly tailored law that furthers a compelling governmental interest.

Opinion No. GA-0426

The Honorable Elizabeth Murray-Kolb

Guadalupe County Attorney

101 East Court Street, Suite 104

Seguin, Texas 78155-5779

Re: Duty of officers who are magistrates under Code of Criminal Procedure article 2.09 to provide warnings to arrestees and whether magistrate duties constitute a judicial function (RQ-0410-GA)

S U M M A R Y

Code of Criminal Procedure article 15.17 requires a magistrate of the county to provide statutory warnings to an arrested person brought before him. Magistrates of the county who have a mandatory duty to provide warnings under article 15.17 include district judges, county judges, the judges of the county courts at law, the judges of statutory probate courts, the justices of the peace, and the mayors, recorders, and judges of the municipal courts of incorporated cities or towns. The frequency with which a particular magistrate of the county performs this

duty may depend upon factors such as the magistrate's location and the hours when the magistrate is available to individuals who have an arrested person in custody.

Service as a magistrate pursuant to article 15.17 is a judicial function within Government Code section 26.006, entitling a county judge who serves as magistrate for a sufficient time to a state salary supplement.

Because the section 26.006 salary supplement is provided by the state, it is not subject to Local Government Code section 152.013. The Guadalupe County Commissioners Court may transfer funds from one budgeted item to another to make payments with respect to the county judge's state salary supplement that the county is legally required to make.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200602474

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: May 3, 2006

◆ ◆ ◆

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-533 The Texas Ethics Commission has been asked to consider whether a former assistant general counsel of a state agency is prohibited from representing a person in a contested case before the agency if the case was opened while the former assistant general counsel was an employee of the agency.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200602367
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: April 27, 2006

◆ ◆ ◆

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §371.204, §371.208

The Health and Human Services Commission (HHSC) proposes to amend Chapter 371, §371.204 and §371.208, concerning Medicaid and other Health and Human Services Fraud and Abuse Program Integrity. Chapter 371 describes the Hospital Screening Criteria for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contract Reviews and Appeals Related to Utilization Review Department Review Decisions.

Background and Justification

Currently, §371.204, Hospital Screening Criteria for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contract Reviews, makes references to utilization review criteria. The Office of the Inspector General performs Utilization Reviews of inpatient hospital stays based on "physician-developed and physician-approved inpatient hospital" criteria. The amendment is necessary to establish new criteria for utilization review because the existing criteria is no longer available for use.

Rule 371.208, the Appeals Related to Utilization Review Department Decisions, allows a hospital that receives a notice from HHSC of an adverse decisions regarding medical necessity of admission, to appeal to the responsible area within HHSC. The written notification of the adverse decision sets out the time frame for the appeal process. HHSC is revising language to clarify the appropriate section within the agency that is responsible for reviewing the appeal.

Section-by-Section Summary

Rule 371.204, Hospital Screening Criteria for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contract Reviews, describes the criteria used for utilization review of inpatient hospital stays. The revisions to the rule include replacing references from "physician-developed and physician-approved inpatient hospital" criteria to "recognized evidence-based guideline" utilization review criteria.

Rule 371.208, Appeals Related To Utilization Review Department Review Decisions, describes the provider's appeal process of utilization review decisions made by HHSC. The proposed amendment changes references from "Department" to "Unit" and from "Resolution Services, Medical/Administrative Appeals" to the "responsible area in HHSC."

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the initial implementation period the proposed amendment is in effect there will be a cost to the state. For state fiscal years 2006 - 2010, the state will incur a cost of \$65,600 per year. For state fiscal year 2006, the state may experience a cost of \$786,400, a federal cost of \$1,213,600 and total cost of \$2,000,000. Local governments will not incur additional costs. The proposed amendment will not have an affect on the local health and human service agencies.

Small and Micro-Business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro-businesses to comply with this amendment as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed amendment. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Brian Flood, Inspector General, has determined that for the initial implementation period the amendment is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of implementing the amendment, will be a more efficient utilization review process due to the modification to the guideline criteria.

Regulatory Analysis

HHSC has determined that the proposed amendment is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposed amendment is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Judy Knobloch, Quality Nurse Specialist, Office of the Inspector General Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-1324, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for May 24, 2006, at 2:00 p.m. in the Lone Star Conference Room at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Kyna Belcher at (512) 491-1884.

To comply with federal regulations, a copy of the proposal is being sent to each Texas Department of Aging and Disability Services (DADS) office where it will be available for public review upon request.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the Texas Medicaid program; and Government Code §2001.006, which allows state agencies to adopt rules in preparation for the implementation of legislation. HHSC has the authority to obtain any information or technology necessary to enable the office to meet its responsibilities, §531.102(a) OFFICE OF INSPECTOR GENERAL.

The proposed rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed amendment.

§371.204. *Hospital Screening Criteria for Texas Medical Review Program (TMRP), Tax Equity and Fiscal Responsibility Act (TEFRA), and LoneSTAR Select II Contract Reviews.*

(a) The Texas Health and Human Services Commission (Commission) uses recognized evidence-based guidelines for [physician-developed and physician-approved] inpatient hospital screening criteria. Non-physician [The criteria included Indicators for Hospitalization (IH) and Treatment (T) criteria: Nonphysician] reviewers use the criteria as guidelines for the initial approval or for the referral of inpatient reviews for medical necessity decisions. If the [IH or T] criteria are not met, or if the non-physician [nonphysician] reviewer has any questions concerning the appropriateness of coding or quality of care, the nonphysician reviewer will refer the medical record to a physician consultant under contract with the Commission for a decision. Even if the [IH or T] criteria are met, the physician consultant may determine that an inpatient admission was not medically necessary and the Commission will issue an admission denial. If a hospital claim is denied for lack of medical necessity or for being provided in an inappropriate setting, the Commission will consider for denial physician claims associated with the hospital admission or service when such claims can be identified and are deemed to be the result of inappropriate admission orders. A physician consultant may determine that an inpatient admission was not medically necessary if a

physician admitted a patient in observation status and the patient was discharged within twenty-four hours from that outpatient status.

(b) For the purposes of the TMRP, TEFRA, and LoneSTAR Select II Contract reviews, medical necessity means that the patient has a condition requiring treatment that can be safely provided only in the inpatient setting.

§371.208. *Appeals Related To Utilization Review Department Review Decisions*

If a hospital receives notification from the Texas Health and Human Services Commission (HHSC) Utilization Review Unit ~~[Department]~~ of an adverse decision regarding medical necessity of admission, days of stay, diagnosis related group (DRG) validation, or a final technical denial, the hospital may appeal to ~~[the] HHSC [Resolution Services, Medical/Administrative Appeals Unit]~~. The written notification of adverse decision will set out the responsible area and time frame within which the appeal must be received by ~~[the] HHSC~~. The Texas Medicaid Policy and Procedure Manual provides additional information on the appeal process. ~~[Resolution Services, Medical/Administrative Appeals Unit.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602408

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 424-6576



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) proposes amendments to §20.22(a), concerning cotton stalk destruction deadlines. The amendments are proposed to update the chart that lists pest management zones and destruction deadlines to make it consistent with recent amendments to §20.20 which reclassified Pest Management Zone 5 as Zone 3, Area 3, and established an October 20 destruction deadline for Zone 3, Area 3.

Dr. Robert Crocker, coordinator for pest management and citrus programs, has determined that for the first five-year period the proposed amendments are in effect, there will be no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule, as amended.

Dr. Crocker also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering and enforcing the amended section will be providing accurate and consistent information to the regulated public. There is no cost anticipated

to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted in writing to Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendments are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapter A.

§20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall be performed periodically to prevent the presence of fruiting structures. Destruction of all cotton plants shall be accomplished in Zone 9 by shredding and in Zone 10 by shredding and plowing. In Zone 9, destruction shall be performed as necessary to keep cotton non-hostable. In Zone 10, soil must be tilled to a depth of 6 or more inches and destruction shall be performed as necessary to prevent regrowth and volunteer cotton.

Figure: 4 TAC §20.22(a)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602407

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 463-4075



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

7 TAC §1.841, §1.845

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of §1.841 and §1.845, concerning non-standard contract filing procedures and the required complaints and inquiries notice for lenders. The commission has determined that these rules more effectively belong in Part 5, in new Chapter 90, concerning Chapter 342, Plain Language Contract Provisions. Therefore, these rules are being proposed for repeal and new rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 342, Subchapters E, F, and G.

§1.841. Non-standard Contract Filing Procedures.

§1.845. Complaints and Inquiries Notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602381

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER Q. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

7 TAC §§1.1201 - 1.1207, 1.1211, 1.1212, 1.1214 - 1.1217, 1.1221, 1.1222, 1.1224 - 1.1227, 1.1231, 1.1232, 1.1234 - 1.1237, 1.1241, 1.1242, 1.1244 - 1.1247, 1.1251 - 1.1256

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 1, Subchapter Q, §§1.1201 - 1.1207, 1.1211, 1.1212, 1.1214 - 1.1217, 1.1221, 1.1222, 1.1224 - 1.1227, 1.1231, 1.1232, 1.1234 - 1.1237, 1.1241, 1.1242, 1.1244 - 1.1247, 1.1251 - 1.1256, relating to Chapter 342, Plain Language Contract Provisions. The commission has determined as part of a rule review that this subchapter more effectively belongs in Part 5, as its own chapter. Therefore, these rules are being proposed for repeal and new rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 342, Subchapters E, F, and G.

§1.1201. *Purpose.*

§1.1202. *Relationship with Federal Law.*

§1.1203. *Definitions.*

§1.1204. *Format, Typeface, and Font.*

§1.1205. *Contract Provisions.*

§1.1206. *Model Clauses.*

§1.1207. *Permissible Changes.*

§1.1211. *Purpose.*

§1.1212. *Relationship with Federal Law.*

§1.1214. *Format, Typeface, and Font.*

§1.1215. *Contract Provision.*

§1.1216. *Model Clauses.*

§1.1217. *Permissible Changes.*

§1.1221. *Purpose.*

§1.1222. *Relationship with Federal Law.*

§1.1224. *Format, Typeface, and Font.*

§1.1225. *Contract Provisions.*

§1.1226. *Model Clauses.*

§1.1227. *Permissible Changes.*

§1.1231. *Purpose.*

§1.1232. *Relationship with Federal Law.*

§1.1234. *Format, Typeface, and Font.*

§1.1235. *Contract Provisions.*

§1.1236. *Model Clauses.*

§1.1237. *Permissible Changes.*

§1.1241. *Purpose.*

§1.1242. *Relationship with Federal Law.*

§1.1244. *Format, Typeface, and Font.*

§1.1245. *Contract Provisions.*

§1.1246. *Model Clauses.*

§1.1247. *Permissible Changes.*

§1.1251. *Applicability.*

§1.1252. *Negotiation in Spanish.*

§1.1253. *Form of Disclosure.*

§1.1254. *Items Excluded from Translation Requirement.*

§1.1255. *Multiple-Party Transactions.*

§1.1256. *Legal Document.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602382

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER R. MOTOR VEHICLE INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§1.1301 - 1.1309

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 1, Subchapter R, §§1.1301 - 1.1309, relating to Motor Vehicle Installment Sales Contract Provisions. The commission has determined as part of a rule review that this subchapter more effectively belong in Part 5, in a new chapter relating to motor vehicles. Therefore, these

rules are being proposed for repeal and new rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§1.1301. *Purpose.*

§1.1302. *Relationship with Federal Law.*

§1.1303. *Definitions.*

§1.1304. *Disclosures and Contract Provisions Required by the Texas Finance Code.*

§1.1305. *Other Disclosures Required by Commission Rule.*

§1.1306. *Format, Typeface, and Font.*

§1.1307. *Contract Provisions.*

§1.1308. *Model Clauses.*

§1.1309. *Permissible Changes.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602383

Leslie L. Pettijohn
Commissioner

Finance Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER S. MOTOR VEHICLE SALES FINANCE LICENSES

7 TAC §§1.1401, 1.1403 - 1.1410

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of

the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 1, Subchapter S, §§1.1401, and 1.1403 - 1.1410, relating to Motor Vehicle Sales Finance Licenses. The commission has determined as part of a rule review that this subchapter more effectively belong in Part 5, in a new chapter relating to motor vehicles. Therefore, these rules are being proposed for repeal and new rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§1.1401. *Definitions.*

§1.1403. *Transfer of License.*

§1.1404. *Processing of Application.*

§1.1405. *Change in Form or Proportionate Ownership.*

§1.1406. *Amendments to Pending Application.*

§1.1407. *Relocation.*

§1.1408. *License Status.*

§1.1409. *Fees.*

§1.1410. *Implementation Provisions of Licensing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602384

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER T. MOTOR VEHICLE SALES FINANCE OPERATIONS

7 TAC §1.1501, §1.1502

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 1, Subchapter T, §1.1501 and §1.1502, relating to Motor Vehicle Sales Finance Operations. The commission has determined as part of a rule review that this subchapter more effectively belong in Part 5, in a new chapter relating to motor vehicles. Therefore, these rules are being proposed for repeal and new rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us.

The repeal is proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§1.1501. *Definitions.*

§1.1502. *Prepaid Maintenance Agreements.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602385

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



CHAPTER 4. CURRENCY EXCHANGE

7 TAC §§4.3, 4.4, 4.10

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Finance Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes the repeal of §4.3, concerning reporting and recordkeeping, §4.4, concerning change of location, and §4.10, concerning mobile currency business.

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Transmission Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange businesses in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 4 consists of the administrative rules the commission previously adopted to implement the repealed Currency Exchange Act. The commission is adopting new regulations under the MSA, which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Chapter 4. Ultimately, all Chapter 4 sections will be repealed.

As explained in this preamble, the commission is proposing to repeal §§4.3, 4.4, and 4.10 because the substance of these sections is incorporated into or rendered unnecessary by the MSA, or is included in new sections of Chapter 33 that the commission is simultaneously proposing in this issue of the *Texas Register*.

Section 4.3 establishes reporting and recordkeeping requirements for persons licensed under the repealed Currency Exchange Act. The commission proposes to repeal §4.3 because the reporting and recordkeeping requirements that apply under the MSA are set out in Finance Code, §§151.602 - 151.604 and proposed new 7 TAC §§33.31, 33.33, 33.35, and 33.37. Section 4.4, which requires a license holder to notify the department before changing its business location, is proposed for repeal because the department no longer requires that a location change receive prior approval. A license holder provides the department with a list of locations in its renewal report and in other reports as requested, and the department considers this reporting to be sufficient. Finally, the commission proposes to repeal §4.10, which requires a license holder to obtain a separate license for each location served by a mobile currency unit, because the MSA allows a license holder to conduct business at multiple locations under one license. Section 4.10 is therefore obsolete.

Ms. Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal of these sections.

Ms. Newberg has also determined that, for each of the first five years the repeal as proposed will be in effect, the anticipated benefit will be the deletion of regulations that are unnecessary

or obsolete. The repealed section will be replaced with new, updated regulations that are clearer and conform to the MSA.

To be considered, comments on the proposed repeal must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to: sarah.shirley@banking.state.tx.us.

The repeal is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

Finance Code, Chapter 151, is affected by the proposed repeal.

§4.3. *Reporting and Recordkeeping.*

§4.4. *Change of Location.*

§4.10. *Mobile Currency Business.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602374

Everette D. Jobe

Certifying Official

Finance Commission of Texas

Proposed date of adoption: August 18, 2006

For further information, please call: (512) 475-1300



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 29. SALE OF CHECKS ACT

7 TAC §29.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Banking or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes the repeal of §29.11, concerning reporting and recordkeeping.

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Transmission Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange businesses in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 29 consists of the administrative rules the commission previously adopted to implement the repealed Sale of Checks Act. The commission is adopting new regulations under the MSA which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing

sections of Chapter 29. Ultimately, all Chapter 29 sections will be repealed.

Section 29.11 establishes reporting and recordkeeping requirements for persons licensed under the repealed Sale of Checks Act. The commission proposes to repeal this section because its substance is incorporated into or rendered unnecessary by the MSA, or is included in new sections of Chapter 33 that the commission is simultaneously proposing in this issue of the *Texas Register*. Specifically, the reporting and recordkeeping requirements that apply to money transmitters and currency exchangers are set out in Finance Code, §§151.602 - 151.604 and proposed new 7 TAC §§33.31, 33.33, 33.35, and 33.37.

Ms. Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five year period the proposed repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal of this section.

Ms. Newberg has also determined that, for each of the first five years the repeal as proposed will be in effect, the anticipated benefit will be the deletion of regulations that are unnecessary or obsolete. The repealed section will be replaced with new, updated regulations that are clearer and conform to the MSA.

To be considered, comments on the proposed repeal must be submitted not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to: sarah.shirley@banking.state.tx.us.

The repeal is proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

Finance Code, Chapter 151, is affected by the proposed repeal.

§29.11. *Reporting and Recordkeeping.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602377

Everette D. Jobe

Certifying Official

Texas Department of Banking

Proposed date of adoption: August 18, 2006

For further information, please call: (512) 475-1300



CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.31, 33.33, 33.35, 33.37

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), proposes to adopt new §33.31, concerning currency exchange recordkeeping, §33.33, concerning currency exchange receipts, §33.35, concerning money transmission recordkeeping, and §33.37, concerning money transmission receipts. The new sections are proposed under the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), which took effect September 1, 2005.

The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, regulates persons that engage in the money transmission and currency exchange businesses in Texas. Prior to the enactment of the MSA, Texas law regulated these businesses under two separate chapters of the Finance Code, Chapter 152 (Sale of Checks Act) and Chapter 153 (Currency Exchange Act). The MSA consolidates regulation into one statute and repeals the Sale of Checks and Currency Exchange Acts.

The commission is in the process of adopting new regulations to implement the MSA. As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Texas Administrative Code, Title 7, Chapter 29 (Sale of Checks Act) and Chapter 4 (Currency Exchange Act), which sections were previously adopted under the repealed Sale of Checks and Currency Exchange Acts. Ultimately, all sections of Chapter 29 and Chapter 4 will be repealed.

The proposed new sections establish recordkeeping and receipt requirements for currency exchange and money transmission transactions conducted by persons licensed under the MSA or the authorized delegates of license holders. The proposed new sections will replace existing 7 TAC §29.11 and §4.3, which the commission is simultaneously proposing to repeal in this issue of the *Texas Register*.

In developing the proposed new sections, the department has carefully reviewed 7 TAC §29.11 and §4.3 to determine whether and to what extent the existing recordkeeping and receipt requirements should be revised. Sections 29.11 and 4.3 require license holders to comply with 31 CFR Part 103, the regulations adopted by the United States Department of Treasury's Financial Crimes Enforcement Network (FinCEN) under the Bank Secrecy Act (collectively BSA) to combat money laundering and other financial crimes. These federal regulations, which apply to all money services businesses, specify the customer and transaction information that must be obtained and recorded in connection with certain types of transactions. Sections 29.11 and 4.3 impose requirements in addition to the recordkeeping required under the BSA.

In evaluating whether to continue requiring license holders and their authorized delegates to obtain and record "additional" information, the commission has received input from and worked closely with the money services industry and the Texas Attorney General's Office. In January, 2006, the banking commissioner hosted a meeting for the specific purpose of discussing issues related to recordkeeping and receipt requirements. Participants included license holders that operate only in Texas, individual license holder members of and counsel for The Non-Bank Funds Transmitters Group, comprised of six national money transmitters that do business and are licensed in Texas, and investigators from the Texas Attorney General's Office who work primarily in the area of money laundering and financial crimes. William Fox, then-director of FinCEN, also attended with members of his staff. The Attorney General's representatives explained how the additional information is used for and assists with the detection, investigation and prosecution of violations of state and federal statutes related to money laundering and other crimes. The industry representatives, who believe the Texas recordkeeping requirements should essentially mirror the BSA, discussed their concern that different Texas requirements undermine the effectiveness of the federal regulations and create significant and counterproductive management, training and compliance issues.

The commission believes that the proposed new sections balance the respective interests of law enforcement and the money services industry in a manner that is reasonable and appropriate. Although the proposed new sections require license holders and authorized delegates to obtain and record certain "non-BSA" information that the commission has determined is necessary for regulatory and law enforcement purposes, the proposed new sections eliminate unnecessary requirements, provide greater flexibility regarding record retention and allow license holders to maintain the information in a manner consistent with their business practices. The proposed new sections clarify requirements and conform them to the reporting and recordkeeping requirements in §§151.602 - 151.604 of the MSA and the department's actual practice.

The recordkeeping and receipt requirements established under the proposed new sections apply to a license holder that conducts transactions under a new MSA license or a Sale of Checks or Currency Exchange license continued in effect until August 15, 2006, under the statute's transition provisions, and the authorized delegate of such a license holder, if applicable (collectively license holder). As explained in this preamble, the currency exchange and money transmission recordkeeping and receipt requirements are set out in four separate sections. The recordkeeping requirements are categorized and organized in a manner that is consistent with and reflects the organization of the BSA. The proposed new sections identify the requirements that apply to specific types and amounts of transactions, and also make clear the extent to and manner in which recordkeeping requirements under the Money Services Act differ from BSA requirements.

Proposed new §33.31 specifies the information and records a license holder must obtain and record related to currency exchange transactions. Subsection (a) clarifies to whom the section applies. Subsection (b) sets out general recordkeeping requirements and permits the records to be retained in a log or by any other means that allows the information to be readily retrieved.

Proposed new §33.31(c) identifies specific records that must be kept for currency exchange transactions. The requirements that apply depend upon the amount of the exchange. Paragraph (1), which applies to exchange transactions over \$1,000, identifies the specific BSA section with which a license holder must comply, clarifies the customer identification and verification documentation required by the department, and lists the additional, non-BSA information that must be recorded. Paragraph (2) requires a license holder to ask the customer whether the transaction is being conducted on the customer's own behalf or on behalf of another and, if the latter, specifies the information relating to the "other" that must be recorded. Paragraph (3) sets out the records required for exchange transactions of \$1,000 or less. Finally, proposed new §33.31(d) authorizes the banking commissioner to waive a requirement of §33.31 in appropriate circumstances.

Proposed new §33.33 requires that a receipt be issued or obtained in connection with certain currency exchange transactions. Subsection (a) clarifies to whom the section applies and subsection (b) sets out specific requirements. Under paragraph (2) of subsection (b), a license holder must issue a receipt for each currency exchange transaction in an amount over \$1,000. The paragraph identifies the information the receipt must include and also requires that the receipt be linked to the exchange transaction records required under proposed new §33.31. Para-

graph (3) establishes the receipt requirements applicable to exchange transactions conducted with other financial institutions.

Proposed new §33.35 specifies the information and records a license holder must obtain and record related to money transmission transactions. Subsection (a) clarifies to whom the proposed new section applies and subsection (b) sets out general recordkeeping requirements. As is allowed in connection with currency exchange records required under proposed new §33.31, subsection (b) permits a license holder to retain the information in a log or by any other means that allows the information to be readily retrieved.

Proposed new §33.35(c), (d), (e) and (f) identify specific types of money transmission transactions that are subject to the MSA and the recordkeeping requirements that apply to each type of transaction. Subsection (c) sets out the requirements that apply to transactions involving the issuance or sale of travelers checks, money orders, or similar payment instruments to one purchaser for \$3,000 or more in currency. The subsection requires a license holder to maintain records for each transaction that contain the customer and transaction information required under the BSA and does not impose any additional requirements.

Proposed new §33.35(d) establishes recordkeeping requirements related to transactions for the issuance or sale of stored value cards, devices, or services for currency or an instrument payable in currency. The subsection's requirements, in recognition of the varied and developing nature of stored value business models and stored value products, are more general than those for other types of transmission. A license holder must maintain transaction records that are appropriate for the license holder's business activities and the type of stored value product issued or sold and that enable the department to determine the license holder's volume of business and the amount of outstanding stored value liability. The subsection notes that FinCEN has not yet adopted specific stored value recordkeeping requirements under the BSA, but that MSA license holders will be required to comply with applicable federal requirements as and when such requirements are adopted.

Proposed new §33.35(e) sets out the recordkeeping requirements that apply to transmission of funds transactions. Paragraph (1) explains the transactions to which the subsection's requirements generally apply and excludes transmission of funds transactions that are not subject to the BSA regulations. Paragraphs (2), (3), and (4) provide additional clarifications.

Paragraph (5) of §33.35(e) specifies the information that a license holder must obtain and the records a license holder must keep with respect to transmission of funds transactions of \$3,000 or more. Paragraph (5) follows the organization and format of the BSA and groups the requirements into subparagraphs according to whether a license holder's customer is the sender who orders the transmission or the recipient who receives payment of the transmitted funds, and, further, whether the transaction is an in-person transaction. Each subparagraph identifies the specific BSA section that must be satisfied, clarifies the department's customer identification and verification documentation requirements to the extent the requirements differ from the BSA, and lists the additional, non-BSA information that must be recorded. Finally, paragraph (6) sets out the records required for transmission of funds transactions less than \$3,000. Paragraph 6 does not include a reference to the BSA because no specific BSA recordkeeping requirements exist for transmission transactions in amounts under \$3,000.

Proposed new §33.35(f) sets out the recordkeeping requirements for transactions involving the transportation of currency or instruments payable in currency. Paragraphs (1) and (2) clarify to whom the subsection applies and set out general requirements. Paragraphs (3), (4), and (5) establish specific recordkeeping requirements based upon the amount transported and whether a license holder's customer sends or receives the transported currency or instrument(s). Subsection (f) does not include a reference to the BSA because no specific BSA recordkeeping requirements exist for currency transportation transactions.

Proposed new §33.35(g) authorizes the banking commissioner to waive a requirement of §33.35 in appropriate circumstances.

Proposed new §33.37 requires that a license holder issue a receipt for each transmission of funds transaction and currency transportation transaction subject to the recordkeeping requirements of proposed new §33.35(e) or (f) regardless of the amount of the transaction. Subsection (a) clarifies to whom the section applies and subsection (b) explains and establishes the specific receipt requirements. Paragraph (1) of subsection (b) defines "receipt" in a manner that applies to electronic or online transactions, in addition to in person transactions. Paragraph (2) identifies the information the receipt must include and also requires that the receipt be linked to the exchange transaction records required under proposed new §33.33(e) and (f). Finally, paragraph (3) provides that a license holder may use one receipt to satisfy the requirements of both proposed new §33.37 and Finance Code, Chapter 278.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that for the first five year period the proposed new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new sections.

Ms. Newberg has also determined that, for each of the first five years the new sections as proposed will be in effect, the anticipated public benefit will be improved regulation of money services businesses through administrative rules that conform to current law and the elimination of unnecessary or obsolete regulations and corresponding reduction of regulatory burden. No economic cost will be incurred by a person required to comply with the proposed new sections, and there will be no adverse impact on small businesses or microbusinesses.

To be considered, comments on the proposed new sections must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Sarah Shirley, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by email to sarah.shirley@banking.state.tx.us.

The new sections are proposed under the Finance Code, §151.101, which authorizes the commission to adopt rules to administer and enforce the Finance Code, Chapter 151.

The Finance Code, Chapter 151, is affected by the proposed new sections.

§33.31. What Records Must I Keep Related to Currency Exchange Transactions?

(a) Does this section apply to me? This section applies if you hold a license issued by the department under the Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable, and you conduct currency exchange transactions. Prior to August 15, 2006, this section also applies if you hold

a valid license issued under repealed Finance Code, Chapter 152 (Sale of Checks Act) or Chapter 153 (Currency Exchange Act).

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the BSA and 31 CFR Part 103;

(B) in addition to the records required under the Money Services Act, the records required under this section related specifically to currency exchange transactions; and

(C) records sufficient to enable you to file accurate and complete reports with the commissioner or department in accordance with the Money Services Act and Chapter 33 of this title (relating to Money Services Businesses).

(2) You must obtain and retain the information required under this section in a log or by another means of retention that allows the information to be readily retrieved. In addition, you must:

(A) maintain your records in such a manner that you can identify and make available to the department the records related to your Texas transaction activity, and separately account for your Texas transaction activity; and

(B) make your records available to the department within the time period reasonably requested.

(c) What specific records must I keep related to currency exchange?

(1) With respect to currency exchange transactions in an amount in excess of \$1,000, you must keep a record for each transaction that contains:

(A) the customer and transaction information required under 31 CFR §103.37(b)(3), provided that, if your customer does not have a taxpayer identification number (e.g., social security, employee identification number) or passport number and is an alien, you may use the number of an alien identification card or other official document evidencing your customer's foreign nationality or residence, such as foreign driver's license or foreign voter registration card; and

(B) the specific identifying information (number, type, issuer) of a document that contains the name and a photograph of your customer and that is customarily acceptable within the banking community as means of identification when cashing checks for nondepositors;

(C) your customer's date of birth;

(D) the rate of exchange;

(E) the amount of any fee charged for the transaction;

(F) the location of the office where the transaction is conducted;

(G) information sufficient to identify your employee or representative who conducts the transaction, such as initials, unique employee or representative code, or other appropriate identifier and a corresponding legend, if necessary; and

(H) the unique number of the receipt required under §33.33 of this title (relating to Currency Exchange Receipts).

(2) With respect to a transaction subject to paragraph (1) of this subsection, you must ask your customer whether the customer is conducting the transaction on the customer's own behalf or on behalf of another person (individual or business). If your customer is conducting

the transaction on behalf of another person, you must, in addition to the information required under paragraph (1)(A) - (H) of this subsection, obtain and record the name and address of the other person together with appropriate identification for the other person, such as taxpayer identification, passport, or alien registration number.

(3) With respect to currency exchange transactions in an amount of \$1,000 or less, you must keep a record for each transaction that contains:

(A) the date and amount of the transaction;

(B) the currency names and total amount of each currency;

(C) the location of the office where the transaction is conducted;

(D) the rate of exchange; and

(E) the amount of fee charged for the transaction.

(d) May I obtain a waiver of the recordkeeping requirements? The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner determines that:

(1) you maintain records sufficient for the department to examine your currency exchange business; and

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under the Money Services Act.

§33.33. What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) Does this section apply to me? This section applies if you hold a license issued by the Department under the Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable, and you conduct currency exchange transactions. Prior to August 15, 2006, this section also applies if you hold a valid license issued under repealed Finance Code, Chapter 152 (Sale of Checks Act) or Chapter 153 (Currency Exchange Act).

(b) Must I issue a receipt in connection with the currency exchange transactions I conduct?

(1) For purposes of this section, "receipt" means a receipt, electronic record or other written confirmation.

(2) With respect to a currency exchange transaction in an amount in excess of \$1,000, you must issue a receipt for each transaction that:

(A) can be linked to the exchange transaction records required under §33.31(c)(1) and (2) of this title (relating to Currency Exchange Recordkeeping); and

(B) contains:

(i) the name of your licensed business and the business address or telephone number;

(ii) the unique transaction or identification number;

(iii) the date and amount of the transaction;

(iv) the currency names and total amount of each currency;

(v) the rate of exchange; and

(vi) the amount of fee charged for the transaction.

(3) With respect to a currency exchange transaction you conduct with another financial institution as that term is defined in

31 CFR §103.11(n) or with a financial institution located outside the United States, you must obtain a contemporaneous receipt for each transaction regardless of where the transaction is conducted. If the other financial institution is a money services business as that term is defined in 31 CFR §103.11(uu), or a money services business or financial institution located outside the United States, the receipt must contain:

- (A) the date and amount of the transaction;
- (B) the currency names and total amount of each currency;
- (C) the rate of exchange;
- (D) the name and address of the money services business issuing the receipt; and

(E) information sufficient to identify the employee or representative who conducts the transaction for the entity issuing the receipt, such as initials, unique employee or representative code, or other appropriate identifier.

§33.35. What Records Must I Keep Related to Money Transmission Transactions?

(a) Does this section apply to me? This section applies to you if you hold a money transmission license issued by the Department under the Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable. Prior to August 15, 2006, this section also applies if you hold a valid license issued under repealed Finance Code, Chapter 152 (Sale of Checks Act) or Chapter 153 (Currency Exchange Act).

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the Bank Secrecy Act and 31 CFR Part 103 (collectively BSA);

(B) in addition to the records required under the Money Services Act, the records required in this section related to specific types of money transmission transactions; and

(C) records sufficient to enable you to file accurate and complete reports with the commissioner or department in accordance with the Money Services Act and Chapter 33 of this title (relating to Money Services Businesses).

(2) You must obtain and retain the information required under this section in a log or by another means of retention that allows the information to be readily retrieved. In addition, you must:

(A) maintain your records in such a manner that you can identify and make available to the department the records related to your Texas transaction activity, and separately account for your Texas transaction activity; and

(B) make your records available to the department within the time period reasonably requested.

(3) If the BSA requires your authorized delegate to obtain, record and maintain information in connection with transactions conducted as your authorized sales representative, you shall, upon request by the Department, arrange with the authorized delegate to have the records made available to the Department. For example, the BSA requires your authorized delegate to maintain records related to the sale of travelers checks issued by you because your authorized delegate, as seller, is the person that actually receives currency. The Department may require you to arrange for the production of those records for ex-

amination or as otherwise necessary or, alternatively, obtain the records directly from your authorized delegate.

(4) If you exchange currency in connection with a money transmission transaction subject to this section, you must comply with the recordkeeping requirements of this section and not the requirements of §33.31 of this title (relating to Currency Exchange Recordkeeping).

(c) What specific records must I keep related to the sale of payment instruments?

(1) This subsection applies to transactions, including third-party bill paying transactions, in which you issue or sell, either as a license holder or the authorized delegate of a license holder, as applicable, travelers checks, money orders, checks or similar payment instruments to one purchaser for \$3,000 or more in currency.

(2) You must keep a record for each transaction that contains the customer and transaction information required under 31 CFR §103.29(a)(2) and (b).

(d) What specific records must I keep related to the issuance and sale of stored value products?

(1) This subsection applies to transactions in which you issue or sell, as a license holder or the authorized delegate of a license holder, as applicable, stored value products (e.g., cards, devices, services) in any amount for currency or an instrument payable in currency.

(2) You must maintain transaction records regarding each stored value transaction that are appropriate for your business activities and the type of stored value product you issue or sell. The records must be sufficient to enable the department to determine the volume of your stored value transactions and the amount of your outstanding stored value liability.

(3) The BSA and 31 CFR Part 103 impose certain requirements upon money services businesses that issue, sell and redeem stored value products. As of the effective date of this section, however, the United States Department of Treasury has not adopted specific recordkeeping requirements for stored value transactions. You must comply with applicable BSA and other federal recordkeeping requirements when and as such requirements are adopted by the Department of Treasury.

(e) What specific records must I keep related to transmission of funds transactions?

(1) This subsection applies to transactions, including third-party bill paying transactions, in which you, either as a license holder or the authorized delegate of a license holder, as applicable:

(A) receive money from a sender for transmission to the sender's designated recipient and the sender pays for or otherwise funds the transmission with currency, an instrument payable in currency, such as a check or money order, or a credit card; or

(B) receive transmitted funds and pay the designated recipient with currency or an instrument payable in currency. The requirements do not apply to a transmission of funds transaction governed by the Electronic Fund Transfer Act of 1978 (title XX, Pub. L. 950630, 92 Stat. 3728, 15 USC 1693, et. seq.), as well as any other funds transfers that are made through an automated clearing house, an automated teller machine, or a point-of-sale system.

(2) If a transmission of funds otherwise subject to this subsection is funded by a credit card, you must obtain and record only the information required under the applicable provisions of 31 CFR §103.33(f).

(3) With respect to a transmission transaction subject to paragraph (5)(A) - (C) of this subsection, you must ask your customer whether the customer is conducting the transaction on the customer's own behalf or on behalf of another person (individual or business) and, if applicable, record the information regarding the other person required under those subparagraphs.

(4) For purposes of paragraph (5) of this subsection, "identifying number" means the taxpayer identification number (e.g., social security, employee identification number) or passport number of your customer or the person on whose behalf your customer conducts the transaction, as applicable, or, if your customer or other person has no such number and is an alien, then the number of an alien identification card or other official document evidencing foreign nationality or resident, such as a foreign driver's license or foreign voter registration card.

(5) With respect to a transmission transaction in an amount of \$3,000 or more, you must keep a record for each transaction that contains:

(A) for an in-person transaction in which your customer is the sender and orders the transaction on the customer's own behalf or on behalf of another person:

(i) the customer and transaction information required under 31 CFR §103.33(f)(1)(i) and (f)(2)(i), except that you must review or record, as applicable:

(I) an identifying number for your customer and, if applicable, the person on whose behalf your customer is conducting the transaction;

(II) a photograph identification of your customer;

(III) the identity of the issuer of the photograph identification;

(IV) the recipient's name; and

(V) the name of the recipient's bank and bank account number if the funds are to be deposited in the recipient's bank account;

(ii) your customer's date of birth;

(iii) your customer's telephone number, or, if your customer has no telephone, a notation in the record of that fact;

(iv) the time of day the transaction is conducted;

(v) the location of the office where the transaction is conducted;

(vi) the method of payment (e.g., cash, check, credit card);

(vii) the amount of any fee charged for the transaction; and

(viii) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(B) for a not-in person transaction, for example, a transaction ordered by phone, fax, mail or online, in which your customer is the sender and orders the transaction on the customer's own behalf or on behalf of another person:

(i) the customer and transaction information required under 31 CFR §103.33(f)(1)(i) and (f)(2)(ii), except that you must review or record, as applicable:

(I) an identifying number for your customer and, if applicable, the person on whose behalf your customer is conducting the transaction;

(II) the recipient's name; and

(III) the name of the recipient's bank and bank account number if the funds are to be deposited in the recipient's bank account;

(ii) your customer's date of birth;

(iii) your customer's telephone number, or, if your customer has no telephone, a notation in the record of that fact;

(iv) the time of day the transaction is conducted;

(v) the location of the office where the transaction is conducted;

(vi) the method of payment (e.g., cash, check, credit card);

(vii) the amount of any fee charged for the transaction; and

(viii) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(C) for an in-person transaction in which your customer receives payment of the transmitted funds as the designated recipient or on behalf of the designated recipient:

(i) the customer and transaction information required under 31 CFR §103.33(f)(1)(iii) and (f)(3)(i), except that you must review or record, as applicable:

(I) an identifying number for your customer and, if applicable, the person on whose behalf your customer is conducting the transaction;

(II) a photograph identification of your customer;

(III) the identity of the issuer of the photograph identification; and

(IV) the sender's name;

(ii) your customer's date of birth;

(iii) your customer's telephone number, or, if your customer has no telephone, a notation in the record of that fact;

(iv) the time of day your customer receives payment of the transmitted funds;

(v) the location of the office where your customer receives payment of the transmitted funds;

(vi) the method of payment (e.g., cash, check); and

(vi) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(D) for a transaction where the transmission proceeds are delivered to the designated recipient other than in person:

(i) the customer and transaction records required under 31 CFR §103.33(f)(1)(iii) and (f)(3)(ii);

(ii) the sender's name;

(iii) the location of the office where the transmitted funds are received; and

(iv) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(6) With respect to a transmission transaction in an amount less than \$3,000, whether your customer is the sender or the recipient, you must keep a record for each transaction that contains:

(A) the date of the transaction and time of day your customer orders the transmission or receives payment of the transmitted funds;

(B) the location of the office where the transaction is conducted;

(C) the amount of the transmission;

(D) the amount of any fee charged for the transaction;

(E) the names of the sender and recipient; and

(F) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(f) What records must I keep related to currency transportation?

(1) This subsection applies to a transaction in which you, as a license holder or the authorized delegate of a license holder, receive currency or an instrument payable in currency to physically transport the currency or its equivalent from one location to another by motor vehicle or other means of transportation or through the use of the mail or a shipping, courier or other delivery services.

(2) With respect to a transaction subject to paragraphs (3) or (4) of this subsection, you must ask your customer whether the customer is conducting the transaction on the customer's own behalf or on behalf of another person (individual or business.) If your customer is conducting the transaction on behalf of another person, you must obtain and record, in addition to the information required under paragraphs (3) or (4) of this subsection, the name and address of the other person together with appropriate identification for the other person, such as taxpayer identification, passport, or alien registration number.

(3) With respect to a transportation transaction in an amount of \$3,000 or more in which your customer is the sender and orders the transportation of the currency on the customer's own behalf or on behalf of another person, you must keep a record for each transaction that contains:

(A) your customer's name, address, date of birth and telephone number or, if your customer has no telephone, a notation in the record of that fact;

(B) your customer's taxpayer identification number (e.g., social security number, employee identification number) or passport number or, if your customer does not have such a number and is an alien, then the number of an alien identification card or other official document evidencing your customer's foreign nationality or residence, such as a foreign driver's license or foreign voter registration card;

(C) the specific identifying information (number, type, issuer) of a document that contains the name and a photograph of your customer and that is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors;

(D) the designated recipient's name;

(E) the designated recipient's address and telephone number to the extent that information is available to you after reasonable inquiry;

(F) the amount of currency or instrument(s) to be transported and, if an instrument, the type of instrument (e.g., money order, check);

(G) the date and time of day you receive from your customer the currency or instrument(s) to be transported;

(H) the location of the office where the transaction is conducted;

(I) the amount of any fee charged for the transaction; and

(J) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(4) With respect to a transportation transaction in an amount of \$3,000 or more in which your customer receives the transported currency as the designated recipient or on behalf of the designated recipient, you must keep a record for each transaction that contains:

(A) your customer's name, address, date of birth and telephone number or, if your customer has no telephone, a notation in the record of that fact;

(B) your customer's taxpayer identification number (e.g., social security number, employee identification number) or passport number or, if your customer does not have such a number and is an alien, then the number of an alien identification card or other official document evidencing your customer's foreign nationality or residence, such as a foreign driver's license or foreign voter registration card;

(C) the specific identifying information (number, type, issuer) of a document that contains the name and a photograph of your customer and that is customarily acceptable within the banking community as a means of identification when cashing checks for nondepositors;

(D) the sender's name;

(E) the sender's address and telephone number to the extent that information is available to you after reasonable inquiry;

(F) the amount of currency or instrument(s) to be delivered to your customer and, if an instrument, the type of instrument (e.g., money order, check);

(G) the date and time of day your customer receives the transported currency or instrument(s);

(H) the location of the office where the transported currency or instrument(s) is delivered to your customer; and

(I) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(5) With respect to a transportation transaction in an amount less than \$3,000, whether your customer is the sender or the recipient, you must keep a record for each transaction that contains:

(A) the date and time of day you receive from your customer the currency or instrument(s) to be transported or your customer receives the transported currency or instrument(s), as applicable;

(B) the location of the office where the transaction is conducted;

(C) the amount of the currency or instrument(s) transported;

(D) the amount of any fee charged for the transaction;

(E) the names of the sender and recipient; and

(F) the unique number of the receipt required under §33.37 of this title (relating to Money Transmission Receipts).

(g) May I obtain a waiver of the recordkeeping requirements? The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner determines that:

(1) you maintain records sufficient for the department to examine your money transmission business; and

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under the Money Services Act.

§33.37. What Receipts Must I Issue Related to Money Transmission Transactions?

(a) Does this section apply to me? This section applies if you hold a money transmission license issued under the Finance Code, Chapter 151 (Money Services Act), or are the authorized delegate of a license holder, as applicable. Prior to August 15, 2006, this section also applies if you hold a valid license issued under repealed Finance Code, Chapter 152 (Sale of Checks Act) or Chapter 153 (Currency Exchange Act).

(b) Must I issue a receipt in connection with the money transmission transactions I conduct?

(1) For purposes of this section "receipt" means a receipt, electronic record or other written confirmation. If the customer conducts the transaction online or electronically, the term includes a means by which the customer can save or print a receipt or other record of the transaction that contains the information required under this section.

(2) With respect to a transmission of funds transaction subject to §33.35(e) or a currency transportation transaction subject to §33.35(f) of this title (relating to Money Transmission Recordkeeping), regardless of the amount of the transaction, you must issue a receipt for each transaction that:

(A) can be linked to the transaction records required under §33.35(e) or (f) of this title, as applicable; and

(B) contains:

(i) the name of your licensed business and the business address or telephone number;

(ii) the unique transaction or identification number;

(iii) the date of the transaction;

(iv) the amount of the transaction in United States dollars; and

(v) the amount of any fee charged for the transaction.

(3) With respect to a currency transmission transaction subject to the Finance Code, Chapter 278, you must provide the receipt required under the Finance Code, §278.051 and §278.053, as applicable. The information required under those sections may be included on the receipt required under paragraph (2) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Everette D. Jobe
Certifying Official
Texas Department of Banking
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For further information, please call: (512) 475-1300



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES SUBCHAPTER A. SALES FINANCE LICENSES

7 TAC §§84.101 - 84.111

The Finance Commission of Texas proposes new 7 TAC, Chapter 84, Subchapter A, §§84.101 - 84.111, concerning Motor Vehicle Sales Finance Licenses. The new rules contained in 7 TAC §§84.101 - 84.111 provide procedures for filing an application for and issuance of a motor vehicle sales finance license under Chapter 348, Texas Finance Code, procedures for adding new registered offices, procedures for the transfer of a motor vehicle sales finance license, processing procedures and time frames for applications, procedures for changes in business form or proportionate ownership, procedures for amendments to pending applications, procedures for the relocation of licensed offices, procedures for designating license status, and the fees associated with licensing activities.

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC, Subchapter S, §§1.1401, 1.1403 - 1.1410. The commission's proposed repeal of Subchapter S is published elsewhere in this issue of the *Texas Register*. The agency is also proposing new §84.103, concerning new registered offices. In addition, please note that due to currently pending amendments, §1.1402 will be proposed for repeal in a future issue of the *Texas Register*. However, the substance of current §1.1402 is being revised, relocated, and proposed in new §84.102 in this proposal. Although the two rules will both be in effect for a short time, these rules do not substantively conflict.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter S under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature.

Section 84.101 (current §1.1401) defines particular terms.

Section 84.101(5)(A) has been clarified regarding the inclusion of spouses with community property interest, which had been stated elsewhere in these licensing rules. In addition, the order of the entity types in §84.101(5) has been reorganized to group like entities together and to list the same sequence of entity types throughout the rules.

Section 84.102 (current §1.1402) describes the procedure for filing a new application for a motor vehicle loan license, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

Section 84.102 has been revised to conform to the agency's current practice, including the description of the requirement for a statement regarding previous installment transactions, as contained in §84.102(2)(D). The requirements for disclosure of owners and principal parties for general partnerships and limited partnerships as well as the fingerprinting requirements have been clarified. The proposal also adds information related to applications by nonprofit organizations. In addition, the order of the entity types in §84.102 has been reorganized to group like entities together and to list the same sequence of entity types throughout the rules.

Section 84.103 (new rule) outlines the procedures for licensees to add new registered offices. Some of this language had been included in different sections within the previously enacted version of these rules, but the agency has determined that a separate section addressing new registered offices would be beneficial to the agency as well as licensees.

Section 84.104 (current §1.1403) describes the procedure for filing an application for transfer of a motor vehicle loan license, including the filing requirements.

Section 84.104 has been revised to clarify the circumstances for each entity type and situation as to when a transfer will be required. Additionally, the order of the entity types in §84.104(a) has been reorganized to group like entities together and to list the same sequence of entity types throughout the rules.

Section 84.105 (current §1.1405) describes what action the licensee must take when it changes the proportion of ownership in or the form of the licensed entity and lists the time frame within which the licensee must notify the commissioner.

Section 84.105(c) has been revised to clarify the circumstances as to when a change in proportionate ownership occurs, not requiring a transfer of license. In addition, a new procedure whereby licensees are to submit a Notification of Proportionate Ownership Change form has been added to §84.105(c).

Section 84.106 (current §1.1404) describes how an application for a motor vehicle loan license is processed, including a description of when an application is complete as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 84.107 (current §1.1406) requires each applicant, upon discovery of new or changed information, to supplement its application within 10 days of discovery of the new or changed information.

Section 84.108 (current §1.1407) describes the procedures for relocating a licensed office, including deadlines for notification to the commissioner.

Section 84.109 (current §1.1408) describes how a licensee may change its license from active to inactive status and how a licensee may activate an inactive license.

Additionally, a specific subsection, §84.109(c), has been added to clarify the difference between inactivating a license and canceling a license.

Section 84.110 (current §1.1409) sets out the fees for new licenses, license transfers, fingerprint checks, license amendments, license duplication, and cost of hearings.

Additionally, a specific subsection, §84.110(c), has been added to provide a fee for a notification of proportionate ownership change.

Section 84.111 (current §1.1410) states the implementation provisions of licensing.

Section 84.111 has been revised in that former §1.1410(b) has been deleted, as the agency is no longer issuing provisional licenses.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws and consistency in credit contracts. A person required to comply with the rules will be responsible for paying the regulatory fees provided in §84.110 of the proposed rule, as currently required by §1.1409. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section. There will be no effect on individuals required to comply with the sections as proposed.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of these rules will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.101. Definitions.

Words and terms used in this chapter that are defined in Chapter 348, Texas Finance Code, have the same meanings as defined in Chapter 348. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--A business entity directly or indirectly through one or more intermediaries that is under common control with the applicant or licensee.

(2) Applicant--An entity that has filed the required forms and fees to operate under a license from the Office of Consumer Credit Commissioner pursuant to Chapter 348, Texas Finance Code.

(3) Foreign Entity--An entity formed under the laws of a jurisdiction other than the State of Texas.

(4) Licensed Location--The central or main location of the entity.

(5) Principal Party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are considered to be principal parties:

(A) proprietors, to include spouses with community property interest;

(B) general partners;

(C) officers of privately-held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, and those with substantial responsibility for operations or compliance with Chapter 348, Texas Finance Code;

(D) directors of privately-held corporations;

(E) individuals associated with publicly-held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (D) of this paragraph (as if the corporation was privately-held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Chapter 348, Texas Finance Code. One of the persons designated shall be responsible for assembling and providing the information required on behalf of the applicant and shall sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) trustees;

(H) officers of nonprofit organizations; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

(6) Privately-Held Corporation--A corporation that is not publicly-held.

(7) Publicly-Held Corporation--A corporation:

(A) subject to the registration provisions of the Securities Act of 1933 in order to allow a public offering of voting stock; or

(B) owned directly or indirectly by a parent corporation that is subject to the registration provisions of the Securities Act of 1933.

(8) Registered Offices--Each location other than the licensed location where a licensee will originate, service, or collect on retail installment contracts subject to Chapter 348, Texas Finance

Code. The term also includes any additional assumed name that the licensee uses at a single location to engage in a Chapter 348 transaction.

§84.102. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The application must include the appropriate fees and the following:

(1) Required forms.

(A) Application for Motor Vehicle Sales Finance License.

(i) Location. A physical street address must be listed for the applicant's proposed licensed location. If the address has not yet been determined or the application is for an inactive license, then the application must indicate an application for an inactive license.

(ii) Responsible. Name the person responsible for the day-to-day operations of applicant's proposed office.

(iii) Signature.

(I) If the applicant is a proprietor or a partnership, each proprietor and general partner must sign.

(II) If the applicant is a corporation, an authorized officer must sign.

(III) If the applicant is a limited liability company, an authorized member or manager must sign.

(IV) If the applicant is a trust or estate, the trustee or executor must sign.

(V) If the applicant is a nonprofit organization, an authorized officer must sign.

(B) List of Registered Offices for a Motor Vehicle Sales Finance License. Each additional location, other than the licensed location shown on the Application for Motor Vehicle Sales Finance License, must be listed on this form. The applicant should provide the assumed name (DBA), physical address, telephone number, and the individual responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee uses at a single location to engage in a Chapter 348 transaction.

(C) Disclosure of Owners and Principal Parties.

(i) Proprietorship. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnership. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be attached that includes the names and titles of all "managerial officials," as that term is defined in §1.002 of the Texas Business Organizations Code, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by

a legal entity and not a natural person, a narrative or diagram must be attached that includes the names and titles of all "managerial officials," as that term is defined in §1.002 of the Texas Business Organizations Code, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporation. The officers and directors' sections on the form must be completed. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership of 10% or greater.

(v) Limited liability company. Each manager, officer, agent, and member owning 10% or more of the company, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes, Article 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership of 10% or greater.

(vi) Trust or Estate. Each trustee or executor must be listed.

(vii) Nonprofit organizations. Each officer must be listed.

(D) Application Questionnaire. All questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested on the form.

(E) Appointment of Statutory Agent and Consent to Service. This form must be completed by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is an individual, the address must be a physical residential address. If the applicant is a corporation or limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Texas Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(F) Personal Affidavit. Each individual listed on the Disclosure of Owners and Principal Parties meeting the definition of principal party as defined in §84.101 of this title (relating to Definitions) must complete this form. All requested information must be provided.

(G) Personal Questionnaire. Each individual listed on the Disclosure of Owners and Principal Parties meeting the definition of principal party as defined in §84.101 of this title must complete this form. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(H) Employment History. Each individual listed on the Disclosure of Owners and Principal Parties meeting the definition of principal party as defined in §84.101 of this title must complete this form. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(I) Fingerprint cards.

(i) For all persons meeting the definition of principal party as defined in §84.101 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the disclosure of owners and principal parties under subparagraph (C)(iii)(I) of this paragraph does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the agency and principal parties of entities currently licensed, fingerprints are not required

(2) Other required filings.

(A) Contract forms. The applicant must provide information regarding the retail installment contract forms generally expected to be used.

(i) Custom forms. If a custom contract form is anticipated for regular use, a complete preliminary draft indicating the number and distribution of copies expected for each transaction must be submitted.

(ii) Stock forms. If an applicant plans to purchase stock forms from a supplier, the applicant must attach a statement that includes the supplier's name and address and a list identifying the forms to be used.

(B) Statement of Experience. An applicant should provide information that relates to the applicant's prior experience in the motor vehicle sales finance business. If the applicant or its principal parties do not have significant experience in the business, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(C) Business Operation Plan. An applicant must attach a brief narrative to the application explaining:

(i) an estimate of how many motor vehicles will be financed by the applicant each year;

(ii) whether the applicant will hold the retail installment contracts or whether the applicant will assign its retail installment contracts;

(iii) whether the applicant will only be accepting contracts from another entity (assignor), and, if so, list the types of entities; and

(iv) whether the collections will occur at the licensed location.

(D) Statement regarding previous installment transactions. Each applicant must submit a statement that it has or has not made or collected on any retail installment contract or accepted the cash

payment for a motor vehicle in one or more installments from September 1, 2002 to date. This includes any contracts signed by applicant as seller that are subsequently assigned to a third party. If the applicant is purchasing another dealership and has permission to operate under an existing license, as described in §84.104 of this title, the statement outlined by this subparagraph is not required. If the applicant has engaged in any of the referenced activities, the applicant must provide the following information:

(i) A list of all contracts used to finance the sale of a motor vehicle in one or more installments (whether the applicant was the original seller or whether the applicant became a holder). The list should include the name of the buyer, contract date, vehicle cash price, amount of down payment, net trade-in amount, total amount financed, payment frequency (monthly, semi-monthly, bi-weekly, weekly), total number of payments, and payment amount(s).

(ii) From the list provided by the applicant, submit copies of ten (10) complete files. The complete file includes, but is not limited to, the buyer's order, signed retail installment contract, payment history, certificate of title, and other documents related to that transaction. If there are fewer than ten (10) accounts, provide a complete copy of each file.

(E) Assumed name. If applicable, provide evidence that all assumed names have been filed with either the county clerk's office (proprietors and general partnerships) or the Texas Secretary of State (corporations, limited liability companies, and limited partnerships).

(F) Entity documents.

(i) Partnerships. A partnership applicant must submit a copy of the relevant portions of the partnership agreement addressing ownership and the responsibility for operations. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) copies of the relevant portions of the by-laws addressing the required number of directors and the required officer positions for the corporation; and

(II) minutes of corporate meetings that record the election of the statutory agent and all current officers and directors as listed on the Disclosure of Owners and Principal Parties or a certification from the secretary of the corporation identifying the statutory agent and current officers and directors as listed on the Disclosure of Owners and Principal Parties.

(iii) Publicly-held corporations. In addition to the items required for corporations, a publicly-held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a copy of the relevant portions of the operating agreement and regulations addressing responsibility for operations; and

(II) minutes of meetings that record the election of the statutory agent and all current officers, directors, and managers as listed on the Disclosure of Owners and Principal Parties, or a certification identifying the statutory agent and current officers, directors, and managers as listed on the Disclosure of Owners and Principal Parties.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the relevant portions of the instrument establishing the estate addressing management of the estate and operations of the applicant must be filed with the application.

(vii) Nonprofit organizations. The applicant must provide a copy of the relevant portions of the instrument creating the nonprofit organization addressing management of the organization and operations of the applicant. A nonprofit applicant must also provide a copy of its filing with the Internal Revenue Service or other evidence to verify that the applicant is a nonprofit organization exempt from taxation under §501(c)(3), Internal Revenue Code of 1986.

(viii) Foreign entities. In addition to the items required by this chapter, a foreign entity must provide a statement of where records of Texas transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment or agree to make all the records available for examination in Texas.

(3) Late filing. An applicant who desires to retroactively file a license application may do so by complying with Texas Finance Code, §349.303, and the rules adopted under this chapter.

§84.103. New Registered Offices.

(a) A licensee may conduct Chapter 348 transactions at different locations or under additional assumed names at a single location by filing a New Registered Office Notification and paying the applicable fee.

(b) The New Registered Office Notification must be filed before a licensee can engage in a Chapter 348 transaction at the different location or under the additional assumed name.

(1) Date registered office began conducting Chapter 348 transactions. If the registered office has commenced business, provide the date the registered office began conducting Chapter 348 transactions. If the form is filed in advance, provide the date the licensee anticipates commencing business under this registered office.

(2) License number of licensed location. Provide the license number shown on the license of the licensed location issued by this office.

(3) Assumed name. If the registered office is using an assumed name, provide evidence that it has been filed with either the county clerk's office (proprietors and general partnerships) or the Texas Secretary of State (corporations, limited liability companies, and limited partnerships).

(c) Late filing. A licensee who desires to retroactively register an office may do so by complying with the Texas Finance Code, §349.302, and the rules adopted under this chapter.

§84.104. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §84.105 of this title (relating to Change in Form or Proportionate Ownership). The term includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship licensee;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner owning 10% or more relinquishes

that owner's entire interest or a new general partner obtains an ownership interest of 10% or more;

(3) any purchase or acquisition of a licensed limited partnership interest

(A) of 10% or more of ownership;

(B) in which a general partner relinquishes that owner's entire interest in a licensee; or

(C) in which a new general partner obtains an ownership interest in the licensee. A transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner;

(4) any purchase or acquisition of control of 10% or more of the outstanding voting stock of any licensed privately-held corporation, or of 51% or more of any privately-held corporation which is the parent or controlling stockholder of a licensed corporation. The term also includes stock ownership changes that result in a change of control (i.e. 51% or more) for a publicly-held company;

(5) any purchase or acquisition of control of 10% or more of a membership interest of any licensed limited liability company, or of 51% or more of any limited liability company which is the parent or controlling member of a licensed limited liability company;

(6) any acquisition of a license by gift, devise, or descent;
and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (5) of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No license may be sold, transferred, or assigned without written approval by the commissioner.

(c) Filing requirements. An application for transfer of a license must be submitted on forms prescribed by the commissioner and in accordance with the rules and instructions. The application for transfer shall include the appropriate fees and the following:

(1) Application. The instructions in §84.102 of this title (relating to Filing of New Application) are applicable to this filing.

(2) Disclosure of Owners and Principal Parties. The instructions in §84.102 of this title are applicable to this filing.

(3) Registered offices. The instructions in §84.102 of this title are applicable to this filing.

(4) Personal Affidavit, Employment History, and Personal Questionnaire. The instructions in §84.102 of this title are applicable to these filings.

(5) Fingerprint cards. The instructions in §84.102 of this title are applicable to this filing.

(6) Appointment of Statutory Agent and Consent to Service. The instructions in §84.102 of this title are applicable to this filing.

(7) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate license has been purchased or otherwise acquired; or

(C) any document that transferred ownership in a license by gift, devise, or descent, such as a probated will or a court order.

(d) Permission to operate. No business under the license shall be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. A request for permission to operate during the pendency of the application may be denied. This subsection does not apply to a change of control of a publicly-held corporation or a change due to the death or disability of an individual.

(e) Purchaser operating under seller's license. A written agreement whereby a seller grants a buyer the authority to operate under the seller's license pending approval of the buyer's new license application is authorized. The agreement must provide that the seller accepts full responsibility to any customer of the licensed business for any acts of the buyer in connection with the operation of the business. The written agreement between the seller and the buyer must be submitted to the commissioner with a request to operate under the seller's license not less than 10 business days after the closing or the date of the sale. The agreement shall be for a defined period of time as provided in the agreement. Two companies may not operate under a single license simultaneously. If a seller grants another company permission to operate under the seller's license, the seller must cease operating under the authority of the license.

(f) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.105. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee desires to change the organizational form of its business (e.g., from proprietorship to corporation), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate fees and transfer documents as provided in this title. In addition, the licensee shall submit a copy of the relevant portions of the organizational document for the new entity (i.e., the articles of incorporation) addressing the ownership and management of the new entity. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to this title. A merger of the parent entity of a licensee that leads to the creation of a new entity requires a transfer application pursuant to this title. A merger of the licensee's parent entity resulting in a different surviving parent entity requires a transfer application pursuant to this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days. Failure to meet the application or notification filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(c) Proportionate ownership.

(1) When a change in proportionate ownership results in the exact same owners still owning the business, a transfer will not be required, even if some of those same owners have a change in pro-

portionate ownership resulting in control of 10% or more of the business where it did not exist previously. Such a proportional change in ownership among the current owners does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to complete and submit a Notification of Proportionate Ownership Change form as prescribed by the commissioner and pay an appropriate fee as outlined in §84.110 of this title (relating to Fees).

(2) This section does not apply to a publicly-held corporation that has filed with the agency the most recent 10K or 10Q filing of the licensee or the publicly-held parent corporation.

(3) Failure to meet the notification filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.106. Processing of Application.

(a) Initial review. Applications shall be responded to within 14 calendar days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and §9.1 *et seq.* of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rule-makings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the investigation fee and the fingerprint processing fee in §84.110 of this title (relating to Fees) shall be forfeited.

(f) Processing time.

(1) A license application shall ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 calendar days after a written request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application shall be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

(g) Applications and notices as public records. Once a license application or notice is filed with the agency, it becomes a "state record"

under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Under Texas Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the agency may not return any original documents associated with a license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Government Code, Chapter 552.

§84.107. Amendments to Pending Application.

Each applicant shall provide information supplemental to that contained in the applicant's original application documents and attachments. Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported within 10 calendar days after the person has knowledge of the action, fact, or information.

§84.108. Relocation.

(a) Relocation of a licensed location. A licensee may move a licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 10 calendar days prior to the anticipated moving date.

(b) Relocation of a registered office. A licensee may move a registered office from the registered location to any other location by payment of the appropriate fees and giving notice of intended relocation to the commissioner not less than 10 calendar days prior to the anticipated moving date.

(c) The notice must include the contemplated new address of the licensed location or registered office and the approximate date of relocation. Failure to meet the notification deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.109. License Status.

(a) Inactivation of an active license. A licensee may cease operating a licensed location and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations on the appropriate form not less than 10 calendar days prior to the anticipated inactivation date and remitting the fee for license amendment. Registered offices will be designated as closed when a license is inactivated. A licensee must continue to pay the yearly renewal fees for an inactive license, or the license will expire.

(b) Activation of an inactive license. A licensee may activate a license by giving notice of the intended activation on the appropriate form not less than 10 calendar days prior to the anticipated activation date and remitting the fee for license amendment. Registered offices must be listed and appropriate fees paid upon activation of a license.

(c) Cancellation of a license. A licensee may cancel a license by providing written notice of the cessation of operations and a request to cancel the license.

(d) Expiration. A license will expire unless a fee is paid by the due date on the license renewal form. A licensee that pays the annual renewal and examination assessment will automatically be renewed even though a new license may not be issued.

§84.110. Fees.

(a) New licenses.

(1) A \$100 non-refundable investigation fee is assessed each time an application for a new license is filed.

(2) Registered office fees. The fee for each registered office is \$25.

(b) License transfers. An applicant must pay a non-refundable investigation fee of \$100 for the transfer of a license.

(c) Notification of proportionate ownership change. An applicant must pay a non-refundable fee of \$25 when filing a Notification of Proportionate Ownership Change form as provided by §84.105 of this title (relating to Change in Form or Proportionate Ownership).

(d) Fingerprint record checks. The non-refundable fee to investigate each applicant's fingerprint record is \$40 per set. This fee must be paid for each set of fingerprints filed with an application for a new license or a license transfer.

(e) License amendment.

(1) A fee of \$25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating a licensed location.

(2) Registered office amendment fees. The fee for amending or transferring a registered office is \$10.

(f) Annual renewal and examination assessment.

(1) An annual renewal fee is required for each licensee consisting of:

(A) a licensed location fee of \$75;

(B) a registered office fee of \$10 per location; and

(C) a variable fee based upon the annual dollar volume of contracts originated or acquired during the preceding calendar year.

(2) The maximum annual assessment for each active license shall be no more than \$250 excluding the registered office fees.

(g) Licensed location or registered office duplicate certificate. The fee for a duplicate certificate is \$10.

(h) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §84.106 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing.

§84.111. Implementation Provisions of Licensing.

(a) Effective date. The effective date of the statutory licensing requirement is September 1, 2002. After September 1, 2002, a motor vehicle seller may not engage in any retail installment transaction without a motor vehicle sales finance license granted under this title. Any motor vehicle seller engaging in a motor vehicle sales finance transaction must comply with Texas Finance Code, §348.401 and §348.402 as it existed prior to September 1, 2001, and 7 TAC, Part 1, Chapter 1, Subchapter P until September 1, 2002. Failure to comply with required registration provisions is grounds for denial of an application made under §84.106 of this title (relating to Processing of Application).

(b) Securitization of transactions. In the case of securitized transactions, such as a transaction in which motor vehicle retail installment contracts are held in trust or similar structure with participatory interests in the structure transferred to investors, the licensing requirements may be fulfilled either by the trust or other securitization entity or by the servicer that is responsible for servicing the contracts included in the securitized entity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602386

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.201 - 84.210

The Finance Commission of Texas proposes new 7 TAC, Chapter 84, Subchapter B, §§84.201 - 84.210, concerning Motor Vehicle Installment Sales Contract Provisions. The new rules contained in 7 TAC §§84.201 - 84.210 provide the purpose of the rules, the procedures for filing non-standard contracts, the relationship with federal law, definitions, required disclosures, format, model contract provisions and clauses, and permissible changes to model contracts and model clause provisions for Chapter 348 motor vehicle retail installment sales transactions.

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC, Subchapter R, §§1.1301 - 1.1309. The commission's proposed repeal of Subchapter R is published elsewhere in this issue of the *Texas Register*. The agency is also proposing new §84.202, concerning non-standard contract filing procedures, modeled after current §1.841.

The new rules implement the provisions of Texas Finance Code §341.502, which requires contracts under Chapter 342 or 348, whether in English or in Spanish, to be written in plain language. The proposed rules provide model contract provisions for use by creditors who are licensed by the Office of Consumer Credit Commissioner. Use of the model contract is optional; however, should a licensee choose not to use the model contract, or a contract comprised of model clauses, then the licensee's non-standard contract must be submitted to the agency in accordance with the provisions of new 7 TAC §84.202.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. The changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. The only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. These rules were reviewed during 2005 and are merely being relocated (with technical corrections).

Section 84.201 (current §1.1301) sets forth the purpose clause and discusses the benefits of plain language contracts. Section §84.201 explains the motor vehicle model contract provisions and states the intention that the provisions should constitute a complete plain language motor vehicle retail sales installment contract. Established model contract provisions will encourage uniformity and provide benefits to consumers by making contracts easier to understand. A creditor is not limited to the contract provisions contained in these rules and retains flexibility

to design contract forms suitable for the creditor's use. These multi-purpose contract provisions are intended for use by franchised dealers, independent dealers, holders of motor vehicle retail installment sales contracts, and individuals who sell less than five motor vehicles per year.

Section 84.202 (new rule) provides the procedures for licensees to submit non-standard contract submissions to the agency.

Section 84.203 (current §1.1302) explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies shall be resolved.

Section 84.204 (current §1.1303) provides definitions in order to ensure consistent treatment and application of defined terms.

Section 84.205 (current §1.1304) outlines the disclosure and contract provisions required by the Texas Finance Code.

Section 84.206 (current §1.1305) outlines the disclosures required by Finance Commission rule.

Section 84.207 (current §1.1306) details the required format, typeface, and font for model plain language motor vehicle retail installment contracts. The rule attempts to establish minimum allowable type sizes and typefaces. The rule also permits flexibility for labeling contracts through the use of titles and headings. The creditor has considerable flexibility in the formatting and arrangement of the information contained in the model clauses. The requirements are necessary to ensure that the contract will be easy for consumers to read and understand.

Section 84.208 (current §1.1307) identifies types of provisions that are typically included in a Chapter 348 motor vehicle retail installment sales contract. Creditors may determine which provisions are most applicable for their transactions. Creditors may omit provisions that are not applicable to a particular transaction. If a creditor desires to assess certain charges or exercise certain rights under the provisions, the creditor must contract for that fee or right. For example, if a creditor desires to assess a late charge, the creditor must provide for a late charge provision. Also, if a creditor desires to purchase collateral protection insurance because the buyer failed to keep required insurance, the creditor must include a contractual provision permitting the creditor to purchase the required insurance.

Section 84.209 (current §1.1308) contains the model clauses. These clauses are the administrative interpretation of a plain language version of typical contract provisions. Some model clauses are required by state and federal statute and regulations depending on the circumstances of a particular transaction.

Section 84.210 (current §1.1309) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using the model clauses. Licensees may use additional documents in connection with the model documents contained in this rule. If a licensee incorporates additional documents, these additions may need to be submitted as non-standard forms if they do not employ the model clauses. Certain documents like the odometer statement, buyer's order, title application documents, notices to co-signer, buyer's guides, and similar documents do not need to be submitted as non-standard forms. Additional documents such as arbitration agreements, conditional delivery agreements, and guarantor agreements will need to be submitted for a readability review in accordance with new 7 TAC §84.202.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there

will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some technical corrections. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.201. Purpose.

(a) The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. The seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the commissioner in compliance with §84.202 of this title (relating to Non-Standard Contract Filing Procedures). The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the commissioner's failure to disapprove a contract constitutes approval.

(b) These provisions are intended to constitute a complete plain language motor vehicle installment sales contract; however, a seller is not limited to the contract provisions contained in these rules.

§84.202. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance Code §341.502(c) will be reviewed to determine that the contract is written in plain language. Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code §341.502.

(b) Certification of readability. Contract filings subject to this subchapter must be accompanied by a certification signed by an of-

ficer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language (i.e., that the contract can be easily understood by the average consumer). The certification must also state that the contract is printed in an easily readable font and type size.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

§84.203. Relationship with Federal Law.

(a) The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. §1601 *et seq.*) and specifically 12 C.F.R. §226.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions, as more fully provided in the Truth in Lending Act and federal Regulation Z.

(b) In the event of any inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency.

(c) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this regulation, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.

(d) The term "amount financed" may be substituted for "principal balance" whenever the amount financed, computed in accordance with federal Regulation Z, is the same as the principal balance computed in accordance with the Texas Finance Code.

(e) The term "annual percentage rate" may be substituted for "annual rate" or "contract rate" whenever the annual percentage rate, computed in accordance with federal Regulation Z, is the same as the annual rate computed in accordance with the Texas Finance Code.

§84.204. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Accrual method--A method to compute a finance charge and apply the finance charge to the unpaid principal balance. Both the true daily earnings method and the scheduled installment earnings method are accrual methods.

(2) Add-on method--A method for calculating a precomputed time price differential charge in which the retail buyer agrees to pay the total of payments. The total of payments includes both the principal balance of the contract and the time price differential charge. The add-on time price differential charge is calculated at the inception of the contract on the principal balance for the full term, as if the principal balance of the contract did not decline over the term of the contract.

(3) Contract rate--The annual time price differential rate that may be stated in a retail installment contract, and that accrues or is assessed against the principal balance that is subject to a finance charge for the term of the contract. The contract rate cannot exceed the daily rate converted to an annualized rate.

(4) Creditor--The seller or any subsequent holder or assignee of the retail installment contract.

(5) Daily rate--The rate authorized under Texas Finance Code §348.105, or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code §348.104, computed on a daily basis using a 365-day calendar year.

(6) Irregular payment contract--A contract:

(A) That is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) The first scheduled installment of which is due later than 1 month and 15 days after the date of the contract.

(7) Regular payment contract--Any contract that is not an irregular payment contract.

(8) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute a finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a \$150 acquisition fee for a heavy commercial vehicle, or a \$25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than \$1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(9) Seller--The seller of the motor vehicle.

(10) Sum of the periodic balances method (Rule of 78s).

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than \$150 for a heavy commercial vehicle, or \$25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that

corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract, or;

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed \$150.

(C) The creditor is not required to give a finance charge refund if it would be less than \$1.00.

(D) These methods may not be used with an irregular payment contract.

(11) True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(12) Vehicle--A motor vehicle as defined by Texas Finance Code §348.001(4).

§84.205. Disclosures and Contract Provisions Required by the Texas Finance Code.

The contract shall have the following disclosures and provisions, as applicable:

(1) The consumer warning required by Texas Finance Code §348.102(d).

(2) The cash price as required by Texas Finance Code §348.102(a)(5). The cash price may be disclosed as a separate item in the Itemization of Amount Financed or elsewhere in the contract. The cash price is the price at which the seller offers in the ordinary course

of business to sell for cash the goods or services that are subject to the transaction.

(3) The amount of any downpayment, specifying the amounts paid in money and in goods traded in, as required by Texas Finance Code §348.102. An amount paid by the seller under Texas Finance Code §348.404 to retire an amount owed (including amounts owed under a vehicle lease) against a motor vehicle used as a trade-in ("payoff") may be disclosed in several ways. The approaches outlined in the Regulation Z Staff Commentary, as from time to time updated, are permissible.

(4) Itemized charges not included in cash price, as required by Texas Finance Code §348.102. Itemized charges may include, but are not limited to, the following charges as applicable:

(A) State inspection fee;

(B) Documentary fee;

(C) Dealer's inventory tax;

(D) Sales tax;

(E) Other taxes not included in the cash price (the seller may disclose one aggregate amount for all taxes or may separately itemize one or more of the taxes);

(F) Deputy service fee;

(G) Title fee;

(H) License fee;

(I) Vehicle property insurance;

(J) Credit life and credit disability insurance;

(K) GAP insurance, as authorized by Texas Finance Code §348.208(b)(4);

(L) Theft protection plan;

(M) Service contract; or

(N) Warranty contract.

(5) The insurance statement required by Texas Finance Code §348.204.

(6) Notice of exclusion of bodily injury and property damage insurance, if excluded, as required by Texas Finance Code §348.205.

(7) Any documentary fee charged must be separately disclosed, either in the itemization or elsewhere, along with the description required by Texas Finance Code §348.006 in reasonable proximity to the disclosure of the documentary fee. Any foreign language translation of this disclosure that is required under Texas Finance Code §348.006 may be given in a separate document.

(8) A disclosure that the buyer may refinance the final scheduled payment upon the terms previously agreed or for any other period of time and payment schedule to which the buyer and holder may agree for a contract described in Texas Finance Code §348.123(b)(5).

§84.206. Other Disclosures Required by Commission Rule.

(a) The consumer credit commissioner notice required by §1.901 of this title (relating to Consumer Notifications) must be disclosed.

(b) In a contract using the true daily earnings method, a brief description of the method of earning finance charge must be given. In a contract using the scheduled installment earnings or the sum of the

periodic balances method of refunding precomputed finance charges, the name of the method used, and at the creditor's option, a description of that method. If in the same contract form, the creditor uses the scheduled installment earnings method in certain circumstances and the sum of the periodic balances method in other circumstances, the creditor shall provide a brief description of the circumstances under which each method will be used, along with the name of the method.

§84.207. Format.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code §341.502(a). If other state or federal law requires a different type size for specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in a readable typeface. Typefaces considered to be readable include Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or provide emphasis.

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times typeface. A point is generally viewed as 1/72 of an inch.

(e) The model clauses may be arranged in any order. Additionally, the seller has considerable flexibility in the formatting and arrangement of the information contained in the model clauses.

§84.208. Contract Provisions.

A Chapter 348 motor vehicle installment sales contract may include, the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossession, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the buyer and the seller.

(2) An assignment of contract provision.

(3) A buyer's affirmation and promise to pay provision.

(4) An inspection acknowledgement provision.

(5) An identification of the motor vehicle.

(6) A description of the trade-in vehicle.

(7) A Truth in Lending Act (TILA) disclosure box.

(8) An itemization of amount financed box.

(9) A documentary fee notice provision.

(10) A deferred downpayments provision.

(11) A required physical damage insurance provision.

(12) Optional insurance coverages provision.

(13) Optional credit life and accident and health insurance provision.

(14) A liability insurance provision.

(15) A provision prohibiting oral modification of the contract.

(16) A provision stating the finance charge earnings method.

(17) A consumer warning provision.

(18) A buyer's acknowledgment of receipt of the retail installment contract as permitted under Texas Finance Code, §348.112.

(19) Consumer credit commissioner notice.

(20) A provision stating the finance charge refund method.

(21) A provision describing the application of payments.

(22) A provision describing the effect of early and late payments.

(23) A provision providing for interest on any matured amount at any rate permitted by law.

(24) Balloon payment provisions.

(25) An agreement to keep the motor vehicle insured.

(26) An agreement authorizing the creditor to purchase required insurance if the buyer fails to keep the motor vehicle insured.

(27) Physical damage insurance proceeds provision.

(28) Returned insurance premiums and service contract charges provision.

(29) An application of credits provision.

(30) A transfer of rights provision.

(31) An agreement granting a security interest in collateral.

(32) Agreements regarding the use and transfer of the motor vehicle, including prohibiting unauthorized transfer and transfer of equity fee limitations.

(33) Agreements regarding the care of the motor vehicle, which may include: keeping the motor vehicle in good working order and repair; keeping the vehicle free from liens and encumbrances; not exposing the motor vehicle to seizure, confiscation, or other involuntary transfer; and repaying the creditor for any amounts paid to satisfy liens or encumbrances.

(34) Default rights and repossession provisions, including consequences of default, collection costs, late charges, buyer's right to redeem, disposition of the motor vehicle, cancellation of optional contracts, and acceleration.

(35) A waiver of any right to receive notice of the intent to accelerate or notice of acceleration.

(36) A provision describing a refund of unearned finance charge upon acceleration.

(37) An integration provision and severability clause.

(38) Provision expressing no waiver and limitations on creditor's rights and usury savings clause.

(39) A provision stating Texas and federal law will apply to the contract.

(40) Disclaimer of express or implied warranties.

(41) Preservation of consumers' claims and defenses provision.

(42) Used car buyer's guide provision.

(43) A guarantee provision.

(44) An arbitration provision.

(45) A negotiation and assignment provision.

§84.209. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Chapter 348.

(1) Identification of parties. This information identifies the parties to the contract.

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:

Figure: 7 TAC §84.209(1)(A)

(B) The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your."

(2) Assignment of contract. The model clause regarding assignment of contract reads: "This contract may be transferred by the Seller."

(3) Buyer's affirmation and promise to pay. The model clause regarding buyer's affirmation and promise to pay reads: "The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not."

(4) Inspection acknowledgement. The model clause regarding inspection acknowledgement reads: "I have thoroughly inspected, accepted, and approved the motor vehicle in all respects."

(5) Identification of the motor vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification of the motor vehicle reads:

Figure: 7 TAC §84.209(5)

(6) Trade-in vehicle description. The model clause regarding trade-in vehicle description reads:

Figure: 7 TAC §84.209(6)

(7) Truth in Lending Act disclosure. The model clause regarding Truth-in-Lending Act disclosure reads:

Figure: 7 TAC §84.209(7)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:

Figure: 7 TAC §84.209(8)(A)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:

Figure: 7 TAC §84.209(8)(B)

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code §348.006 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(B) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comparador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder \$50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de \$50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para

un contrato de vehículo comercial pesado). Esta notificación se exige por ley."

(10) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. The model clause regarding deferred downpayments reads:

Figure: 7 TAC §84.209(10)

(11) Required physical damage insurance. The creditor may choose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:

Figure: 7 TAC §84.209(11)

(12) Optional insurance coverages. The model clause regarding optional insurance coverages reads:

Figure: 7 TAC §84.209(12)

(13) Optional credit life and accident and health insurance. The model clause regarding optional credit life and accident and health insurance reads:

Figure: 7 TAC §84.209(13)

(14) Liability insurance. If liability insurance coverage is not included in the contract, any of the following notices are sufficient to satisfy the requirements of Texas Finance Code §348.205 if printed in a size equal to at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(A) "THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(B) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT."

(C) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Subchapter C of Chapter 349. The model clause regarding prohibition against oral modifications reads:

Figure: 7 TAC §84.209(15)

(16) Finance charge earnings methods.

(A) Regular transaction using sum of the periodic balances method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract."

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ ____ per \$100.00."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ ____ per \$100.00."

(B) True daily earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method:

(i) Sales tax advance: At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance.

(I) "You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid

portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges."

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(A) For Contracts Using the Sum of the Periodic Balances Method (Rule of 78s) or the Scheduled Installment Earnings Method. The notice may read:

(i) "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS." or

(ii) "NOTICE TO THE BUYER--THE BUYER SHOULD NOT SIGN THIS CONTRACT BEFORE READING IT OR IF IT CONTAINS ANY BLANK SPACES. THE BUYER IS ENTITLED TO A COPY OF THE SIGNED CONTRACT. UNDER THE LAW, THE BUYER HAS THE RIGHT TO PAY OFF IN ADVANCE ALL THAT THE BUYER OWES AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. THE BUYER SHOULD KEEP THIS CONTRACT TO PROTECT ITS LEGAL RIGHTS."

(B) For contracts using the true daily earnings method. The notice may read: "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY SAVE A PORTION OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS."

(18) Buyer's acknowledgment of contract receipt.

(A) The following acknowledgments conform to the requirements of Texas Finance Code §348.112 if they appear directly above the place for the buyer's signature in at least ten-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. A creditor may choose the most appropriate option:

(i) If the buyer's signature is dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(ii) If the buyer's signature is not dated. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)."

(iii) If the buyer's signature is not dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read: "I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(iv) If the buyer's signature is not dated but the contract contains the date of the transaction. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT."

(B) Acceptance of contract receipt. The model clause regarding acceptance of contract receipt reads:
Figure: 7 TAC §84.209(18)(B)

(19) Consumer credit commissioner notice. The following notice satisfies the requirements of Texas Finance Code §14.104 and §1.901 of this title relating to Consumer Notifications. The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; (512) 936-7600, and can be contacted relative to any inquiries or complaints."

(20) Finance charge refund method. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the finance charge refund provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this Finance Charge Refund provision should not be disclosed because it is not applicable.

(A) Contracts using the sum of the periodic balances method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00."

(iii) At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00."

(B) Contracts using the scheduled installment earnings method.

(i) Name of the method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of the method. The creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than \$1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following illustrates one way that this may be done: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00."

(21) Application of payments. In this provision, the term "finance charge" should not be construed to have the same meaning as Finance Charge as defined by the Truth in Lending Act. A default or late charge is considered to be a finance charge under Texas law; therefore, a default or late charge can be charged and collected as part of the earned finance charge. At the creditor's option the creditor may modify the application of payments language by adding "and late charges" following the phrase "earned but unpaid finance charge." The model clause reads:

Figure: 7 TAC §84.209(21)

(22) Effect of early and late payments. True daily earnings method: The model clause reads: "You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase."

(23) Interest on matured amount. The model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Chapter 303 of the Texas Finance Code.

(24) Balloon payments. If the contract has a balloon payment, the creditor must include a provision in the contract that allows the buyer to refinance the balloon payment over time. The provision must comply with Texas Finance Code §348.123. The model provision for defining the balloon payment reads: "A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment."

(A) Paying the balloon payment. If a retail installment contract contains a balloon payment that is the final payment, the contract must also provide the right for the retail buyer to pay the balloon payment. The model provision for paying the amount of the final scheduled balloon payment reads: "I can pay all I owe when the balloon payment is due and keep my motor vehicle."

(B) Balloon payment alternatives. If the retail installment contract contains the right for a retail buyer to refinance a balloon installment, the contract provision to refinance the installment must comply with either clause (i) or (ii) of this subparagraph. A contract under clause (ii) of this subparagraph must also contain the right of the retail buyer to sell the motor vehicle back to holder or retail seller.

(i) The model clause to describe a buyer's right to refinance a balloon installment under Texas Finance Code §348.123(a), when applicable reads: "If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income."

(ii) If the contract contains a balloon payment and the seller intends Texas Finance Code §348.123(b)(5) to apply to the contract:

(I) Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(B)(iii). "I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly

payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule."

(II) If the contract includes a balloon payment, the creditor must draft a provision addressing the repurchase option.

(25) Agreement to keep the motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle." The creditor may include the following optional provision: "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(26) Your right to purchase required insurance if I fail to keep the motor vehicle insured. The model clause regarding agreement to allow creditor to purchase required insurance if buyer fails to keep the motor vehicle insured reads: "If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file."

(27) Physical damage insurance proceeds. The model clause regarding physical damage insurance proceeds reads: "I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me."

(28) Returned insurance premiums and service contract charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(A) The model clause for contracts using the true daily earnings method reads: "If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(B) For contracts using the scheduled installment earnings or sum of the periodic balances method, the creditor may substitute the following: "If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(29) Application of credits. The model clause regarding application of credits reads: "Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments."

(30) Transfer of rights. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract

is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code, §348.301. The model clause regarding transfer of rights reads: "You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies."

(31) Grant of a security interest in collateral. The model clause regarding a description of a security interest granted in a typical motor vehicle installment sale reads:
Figure: 7 TAC §84.209(31)

(32) Agreements regarding the use and transfer of the motor vehicle. The contract may contain a provision prohibiting a buyer from transferring any interest in the motor vehicle without the creditor's written permission, requiring the buyer to notify the seller of change of address, or prohibiting the removal of the motor vehicle from Texas. The transfer fee limitation establishes the maximum fee that a creditor could contract for, charge, or collect for transferring the buyer's equity in the motor vehicle to another party. If desired, a creditor could amend the model provision to reflect a lower transfer fee amount. The model clause regarding agreements regarding the use and transfer of the motor vehicle reads: "I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25.00 (\$50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission."

(33) Care of the motor vehicle. The contract may obligate the buyer to keep the motor vehicle free of liens and encumbrances, require the buyer to keep the motor vehicle in good working order and repair, or prohibit the buyer from allowing the motor vehicle to be exposed to seizure, confiscation, or other involuntary transfer. The model clause regarding care of the motor vehicle reads: "I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount."

(34) Default rights and repossession provisions. This subsection details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Business and Commerce Code, §1.309. The following provisions are samples of model clauses of some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) Acceleration and default. The model clause regarding acceleration and default reads:
Figure: 7 TAC §84.209(34)(A)

(B) Late charge. The model clause regarding late charge reads: "I will pay you a late charge as agreed to in this contract when it accrues."

(C) Repossession. At the creditor's option a creditor may choose one of the following model provisions pertaining to repossession. The model clauses regarding repossession read:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "without breaching the peace," as determined by the Texas courts, and as found under clause (ii) of this subparagraph.

(ii) "If I default, you may repossess the motor vehicle from me if you do so without breaching the peace. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle."

(D) Buyer's right to redeem. The model clause regarding buyer's right to redeem reads: "If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract."

(E) Disposition of motor vehicle. The model clause regarding disposition of motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title."

(F) Collection costs. The model clause regarding collection costs reads: "If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows."

(G) Cancellation of optional insurance or service contracts. The model clause regarding cancellation of optional insurance or service contracts reads: "This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) Acceleration, waiver of notice of intent to accelerate, and notice of acceleration. A model clause regarding the holder's right to accelerate maturity of the contract and to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both reads: "If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice

that you are demanding or intend to demand immediate payment of all that I owe."

(36) Refund upon acceleration. Sum of the periodic balances method or scheduled installment earnings method: The model clause regarding the buyer's right to a finance charge refund upon acceleration of the contract reads: "If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full."

(37) Integration and severability. The contract may include an integration clause indicating that the parties to the contract intend it to be final written expression their agreement, such as: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The contract may also include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) No waiver and limitations on creditor's rights and usury savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts."

(39) Applicable law. A model clause to establish the law that will apply to the contract reads: "Federal and Texas law apply to this contract."

(40) Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Article 2, Subchapter C of the Business and Commerce Code, and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §433.1 *et seq.*, reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract

only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.1 *et seq.*, reads:

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

(43) Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (e.g., price paid to retail seller to purchase retail installment contract)."

§84.210. Permissible Changes.

(a) Creditors may make the following types of changes to the model clauses and the model contracts and may still be eligible for the defenses provided by Texas Finance Code, §349.101:

- (1) Deleting inapplicable disclosures;
- (2) Using a line for the consumer to initial, rather than a checkbox;
- (3) Adding a signature line to the insurance disclosures to reflect joint policies;
- (4) Substituting another term for "buyer", "seller" or "creditor" that has the same meaning, or use of pronouns such as "you", "we" and "us" or "it;"
- (5) Changing the person of the pronouns to refer to the seller as "I" or "me" and the buyer as "you" or "your;"
- (6) Substituting the word "vehicle" for the term "motor vehicle;"
- (7) Presenting the model clauses in any order, and combining or further segregating at the creditor's option;
- (8) Inserting descriptive headings or number provisions;
- (9) Changing the case of a word if otherwise permitted by the Texas Finance Code;

(10) Omitting references to different provisions for heavy commercial vehicles where the creditor elects to treat buyers of heavy commercial vehicles under the rules applicable to other vehicles;

(11) Moving provisions from one side of the form to the other and directing the buyer to see the other side or placing all of the provisions on the same side of the form; or

(12) Changing any provision to comply with federal law.

(b) A sample model motor vehicle retail installment contract. Figure: 7 TAC §84.210(b)

(c) A contract may include other provisions that are not prohibited by law, but the other provisions must be submitted to the Office of Consumer Credit Commissioner for readability review before the creditor includes them.

(d) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the buyer than those that would result from the use of a model clause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7640



SUBCHAPTER C. SALES FINANCE OPERATIONS

7 TAC §84.301, §84.302

The Finance Commission of Texas proposes new 7 TAC, Chapter 84, Subchapter C, §84.301 and §84.302, concerning Motor Vehicle Sales Finance Operations. The purpose of proposed new 7 TAC §84.301 and §84.302 is to define prepaid maintenance agreements and contracts and outline the usage and disclosure of the agreements as sold in connection with motor vehicles.

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC, Subchapter T, §1.1501 and §1.1502. The commission's proposed repeal of Subchapter T is published elsewhere in this issue of the *Texas Register*.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. The changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. The only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. These rules were enacted in 2004 and are simply being relocated so that all of the agency's current rules regarding motor vehicle installment sales will be moved at the same time.

Section 84.301 (current §1.1501) defines a prepaid maintenance agreement and service contract.

Section 84.302 (current §1.1502) outlines the methods of disclosure on a retail installment sales contract for prepaid maintenance agreements sold in connection with motor vehicles. Prepaid maintenance agreements that are required or otherwise included with the sale of a motor vehicle must be disclosed as a component of the cash price. Those agreements sold on a voluntary basis may be disclosed under two methods specified in the rule.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some technical corrections. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.301. Definitions.

(a) Prepaid Maintenance Agreement--a maintenance agreement as defined in §1304.004, Texas Occupations Code.

(b) Service Contract--has the meaning assigned in §1304.003, Texas Occupations Code. Pursuant to §1304.004, Texas Occupations Code, a prepaid maintenance agreement is a type of service contract.

§84.302. Prepaid Maintenance Agreements.

(a) If the prepaid maintenance agreement is required in connection with the sale of a motor vehicle, regardless of whether the sale is a cash sale or a credit sale, the charge for the prepaid maintenance agreement should be disclosed or otherwise included as a component of the cash price.

(b) If the prepaid maintenance agreement is offered as a voluntary purchase in connection with the credit sale of a motor vehicle, the prepaid maintenance agreement may be disclosed:

(1) as a component of the cash price; or

(2) as an itemized charge on the retail installment sales contract.

(c) At the time of the sale, the services covered by the prepaid maintenance agreement should be reasonably expected to be delivered during the term of the agreement.

(d) The agency may evaluate the assessed charge for a prepaid maintenance agreement. If the agency determines that the charge is excessive considering relevant factors, then the agency may consider the excessive amount as finance charge. One of the relevant factors the agency will consider is whether the assessed charge and sales representations between cash and credit transactions differ.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§90.101 - 90.105

The Finance Commission of Texas proposes new 7 TAC, Chapter 90, Subchapter A, §§90.101 - 90.105, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.101 - 90.105 outline general provisions applicable to all plain language contracts under Chapter 342, including definitions, the relationship with federal law, format, procedures for filing non-standard contracts, and the complaints and inquiries notice that lenders must provide to consumers.

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC, Subchapter Q, §§1.1203, 1.1204, and 1.1212. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*. In addition, the agency is also proposing the repeal and relocation of the language currently contained in 7 TAC §1.841 and §1.845, as the agency believes these two rules relate to Chapter 342 plain language contract provisions and are more appropriately included within new Chapter 90, Subchapter A.

In general, the purpose of §§90.101 - 90.105 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts contained in new Chapter 90 is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature.

Section 90.101 (current §1.1203) provides definitions in order to ensure consistent treatment and application of defined terms.

Section 90.102 (current §1.1212) explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies shall be resolved. Please note that current §§1.1202, 1.1212, 1.1222, 1.1232, and 1.1242 have all been consolidated into new §90.102.

Section 90.103 (current §1.1204) details the required format, typeface, and font for model plain language Chapter 342 contracts. The requirements are necessary to ensure that the contract will be easy for consumers to read and understand. Please note that current §§1.1204, 1.1214, 1.1224, 1.1234, and 1.1244 have all been consolidated into new §90.103.

Section 90.104 (current §1.841) provides the procedures for lenders to submit non-standard contract submissions to the agency.

Section 90.105 (current §1.845) outlines the complaints and inquiries notice that lenders must provide to consumers.

These rules relate to model clauses and model contracts, but licensees are not required to adopt the model language contained in the rules of new Chapter 90. However, for those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written

comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapters E, F, and G.

§90.101. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Acquisition Charge--a finance charge assessed for making the loan as authorized under Texas Finance Code, §342.252.

(2) Borrower--the person or persons who sign the loan agreement.

(3) Collateral--an interest in personal property which serves to secure the payment or performance of an obligation. See "Security."

(4) Deferment--an additional period of time beyond a due date for the borrower to make a payment or payments; also known as "Extension."

(5) Installment Account Handling Charge--a finance charge assessed on the loan as authorized under Texas Finance Code, §342.252.

(6) Prepayment--any whole or partial payment of an amount equal to one or more full installments made by the borrower prior to the date the payment is due.

(7) Security--an interest in personal property which serves to secure the payment or performance of an obligation. See "Collateral."

§90.102. Relationship with Federal Law.

In the event of an inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency. The remainder of the contract will remain in full force and effect. Use of the Federal Reserve Board's promulgated model forms complies with the Truth in Lending requirements of this chapter.

§90.103. Format.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) Titles, headings, subheadings, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or provide emphasis.

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not

strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times typeface.

§90.104. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of §341.502(c) will be reviewed to determine that the contract is written in plain language. Non-standard contracts submitted for review may gain certain protections under the provisions of §341.502.

(b) Certification of readability. Contract filings subject to this subchapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language (i.e., that the contract can be easily understood by the average consumer). The certification must also state that the contract is printed in an easily readable font and type size.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

§90.105. Complaints and Inquiries Notice.

(a) Definitions. "Privacy notice" means any notice that a lender gives regarding a consumer's right to privacy as required by a specific state or federal law.

(b) Required notice.

(1) The following notice must be given to let consumers know how to file complaints: "The (your name) is (licensed and examined or registered) under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."

(2) The required notice must be given in the language in which a transaction is conducted.

(3) The required notice must be included with each privacy notice.

(4) Regardless of whether any state or federal law requires the lender to give privacy notices, the lender must take appropriate steps to let consumers know how to file complaints by giving the required notice in compliance with paragraph (1) of this subsection.

(5) In addition to the notice required to be included on each privacy notice, a notice is also required on each contract of a licensed lender pursuant to §14.104, Texas Finance Code.

(A) The text of the notice required by paragraph (1) of this subsection is acceptable to meet this requirement; or

(B) A lender may use the following notice: "This lender is licensed and examined by the State of Texas--Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (512) 936-7600 - (800) 538-1579."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. SECURED CONSUMER INSTALLMENT LOANS (SUBCHAPTER E)

7 TAC §§90.201 - 90.204

The Finance Commission of Texas proposes new 7 TAC Chapter 90, Subchapter B, §§90.201 - 90.204, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.201 - 90.204 outline model plain language provisions for secured consumer installment loans (Subchapter E).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC Subchapter Q, §1.1211 and §1.1215 - 1.1217. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

In general, the purpose of §§90.201 - 90.204 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than

the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the rules, model clauses, or contracts and thus, further explanation is unnecessary.

New 7 TAC §§90.201 - 90.204 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts for Chapter 342, Subchapter E transactions.

Section 90.201 (current §1.1211) outlines the purpose of new Subchapter B, which is to provide model plain language for secured consumer installment loans (Chapter 342, Subchapter E).

Section 90.202 (current §1.1215) identifies the types of provisions that may be included in a Subchapter E contract.

Section 90.203 (current §1.1216) contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical Subchapter E contract provisions.

Section 90.203(b)(21) concerning final agreement and modifications in writing has been revised in order clarify the model language with respect to the prohibition of modification by oral agreement. The corresponding figures contained in §90.204(a)(7) and (8) have also been revised to reflect this change (see §90.204 below).

Section 90.204 (current §1.1217) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using a model contract and includes figures containing entire plain language model contracts for Subchapter E transactions.

The model contracts contained in §90.204(a)(7) and (8) have been revised to reflect a clarification concerning the prohibition of modification by oral agreement (see §90.203 above).

Because these rules provide model clauses and model contracts, licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

However, should a licensee decide to modify its contract forms based on the revisions to the model contracts, additional economic costs may be incurred as a consequence of §§90.201 - 90.204. The potential additional costs resulting from a licensee's decision to implement the revised model language are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract. There would be no adverse effect on small businesses as compared to the effect on large businesses for those licensees choosing to modify their contracts.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapter E.

§90.201. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter E transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with §90.104 of this title. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) The provisions in this subchapter are intended to constitute a complete plain language Chapter 342, Subchapter E contract; however, a licensee is not limited to the contract provisions addressed by these rules.

§90.202. Contract Provisions.

A Chapter 342, Subchapter E contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of

the following provisions, it must include the provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, if a licensee does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter E contract may contain the following provisions:

- (1) Identification of the parties, including the name and address of each party;
- (2) A Truth in Lending Act (TILA) disclosure box;
- (3) An Itemization of Amount Financed box;
- (4) A definitions section specifying the pronouns that designate the borrower and the lender;
- (5) A promise to pay;
- (6) A late charge provision;
- (7) A provision for after maturity interest;
- (8) A provision specifying that prepayment is permitted;
- (9) A provision specifying the finance charge earnings and refund method;
- (10) A provision authorizing deferments;
- (11) A provision contracting for a fee for a dishonored check;
- (12) A provision specifying the conditions causing default;
- (13) A provision relating to property insurance;
- (14) A provision relating to credit insurance;
- (15) A provision regarding the mailing of notices to the borrower;
- (16) Statement of truthful information;
- (17) A waiver of notice of intent to accelerate and waiver of notice of acceleration;
- (18) A provision expressing no waiver of the licensee's rights;
- (19) A collection expense clause;
- (20) A clause providing for joint liability;
- (21) A usury savings clause;
- (22) A provision stating that if any part of the contract is declared invalid, the rest of the contract remains valid; and
- (23) Complaints and inquiries notice.

§90.203. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter E secured consumer installment loan contract:

- (1) The model clauses refer to the Borrower as "I" or "me." The Lender is referred to as "you" or "your."

(2) Itemization of Amount Financed box. Two model clauses for the itemization of amount financed are presented in this paragraph. One is for use when the licensee finances an administrative fee. The other is for use when the administrative fee is paid in cash by the borrower. A licensee may delete portions applicable to any insurance premiums that are not financed and may also delete other inapplicable portions. The model clause options itemizing the amount financed read:

(A) For use when the administrative fee is financed:
Figure: 7 TAC §90.203(b)(2)(A)

(B) For use when the administrative fee is paid in cash:
Figure: 7 TAC §90.203(b)(2)(B)

(3) Promise to pay. The model clause for the borrower's promise to pay reads:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(4) Late charge. At the lender's option, the late charge provision may be made applicable to loans with more than one installment. Alternatively, a lender may omit the late charge provision for loans with a single repayment. The late charge model clause reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(5) After maturity interest. The after maturity interest model clause reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(6) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(7) Finance charge earnings and refund method. The model finance charge earnings and refund method clause options read:

(A) For contracts using the scheduled installment earnings method, Texas Finance Code §342.201(a):
Figure: 7 TAC §90.203(b)(7)(A)

(B) For contracts using the scheduled installment earnings method, Texas Finance Code §342.201(d): "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges."

If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(C) For contracts using the scheduled installment earnings method, Texas Finance Code §342.201(e):
Figure: 7 TAC §90.203(b)(7)(C)

(D) For contracts using the true daily earnings method, Texas Finance Code §342.201(d): "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(E) For contracts using the true daily earnings method, Texas Finance Code §342.201(e):
Figure: 7 TAC §90.203(b)(7)(E)

(8) Deferment clause. The deferment model clause reads:

(A) "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(B) Optional language for unilateral deferment(s): "You may extend one or more of my payments without my permission. You have to wait six months to do it again."

(9) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. An authorized lender may always choose a lesser amount. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately."

(10) Default clause. The model default clause reads: "I will be in default if: I do not timely make a payment; I break any promise I made in this agreement; I allow a judgment to be entered against me or the collateral; I sell, lease, or dispose of the collateral; I use the collateral for an illegal purpose; or you believe in good faith that I am not going to keep any of my promises. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents."

(11) Property insurance disclosure box. The model provision for the disclosure of property insurance reads:
Figure: 7 TAC §90.203(b)(11)

(12) Credit insurance disclosure box. The model provision for the disclosure of credit insurance reads:
Figure: 7 TAC §90.203(b)(12)

(13) Mailing of notice to borrower. The model agreement regarding mailing of notice to the borrower reads: "You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it."

(14) Statement of truthful information. The following clause is sufficient as the borrower's agreement that the information provided to the licensee is true: "I promise that all information I gave you is true."

(15) Waiver of notice of intent to accelerate and waiver of notice of acceleration clause. The waiver of notice of intent to acceler-

ate and waiver of notice of acceleration clause reads: "If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(16) No waiver of lender's rights. The model agreement regarding the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(17) Collection expense clause. The model provision relating to the collection of expenses if default occurs reads: "If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs."

(18) Joint liability clause. The model joint liability clause reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(19) Usury savings clause. The model usury savings clause reads: "I don't have to pay interest or other amounts that are more than the law allows."

(20) Savings clause. The model savings clause reads: "If any part of this contract is declared invalid, the rest of the contract remains valid."

(21) Final agreement and modifications in writing. For loan agreements exceeding \$50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model agreement requiring any change to be in writing reads: "This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements."

(22) Security agreement clause. The model clause for the security agreement reads: "If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements."

(23) Application of law. The model agreement regarding the law to be applied to the contract reads: "Federal law and Texas law apply to this contract."

(24) Complaints and inquiries notice. "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (512) 936-7600 - (800) 538-1579."

(25) Clause describing collateral. In the TILA disclosure box, the model clause describing the collateral reads: "You will have a security interest in the following described collateral _____."

(26) Clause relating to prepayment. In the TILA disclosure box, the model clause options for prepayment read:

(A) For contracts using the scheduled installment earnings method: "Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty."

(B) For contracts using the true daily earnings method: "Prepayment: If I pay off early, I will not have to pay a penalty."

(27) Security agreement. If the loan is secured, a separate security agreement should be used.

(A) The model clause stating the secured nature of the agreement reads: "To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, improvements and attachments to the property, insurance refunds, and proceeds."

(B) Prohibition on transfer and collateral free of encumbrance. The model agreement keeping the collateral free from encumbrance and against transferring it reads: "I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you."

(C) Location and restrictions on movement or transfer of collateral. The model agreement regarding the location of the collateral reads: "I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission."

(D) Upkeep and use of collateral. The model agreement regarding the upkeep and use of the collateral reads: "I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally."

(E) Modifications in writing. The model agreement regarding changes made to the security agreement reads: "Any change to this security agreement has to be in writing. Both you and I have to sign it."

(F) Any default is a default of the security agreement. The model agreement in the security agreement regarding defaults reads: "Any default under my agreements with you will be a default of this security agreement."

(G) Default clause. The model clause setting out the security agreement in case of default reads: "If there is a default, you can take the collateral. You will only do this lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest."

§90.204. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the secured consumer installment loans plain language model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model contract using the scheduled installment earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(7)

(8) A sample model contract using the true daily earnings method is presented in the following example.
Figure: 7 TAC §90.204(a)(8)

(9) A sample model security agreement is presented in the following example.
Figure: 7 TAC §90.204(a)(9)

(b) An authorized licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602390

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER C. SIGNATURE LOANS (SUBCHAPTER F)

7 TAC §§90.301 - 90.304

The Finance Commission of Texas proposes new 7 TAC Chapter 90, Subchapter C, §§90.301 - 90.304 concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.301 - 90.304 outline model plain language provisions for signature loans (Subchapter F).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC Subchapter Q, §1.1201 and §§1.1205 - 1.1207. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

In general, the purpose of §§90.301 - 90.304 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to

formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the rules, model clauses, or contracts and thus, further explanation is unnecessary.

New 7 TAC §§90.301 - 90.304 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts for Chapter 342, Subchapter F transactions.

Section 90.301 (current §1.1201) outlines the purpose of new Subchapter C, which is to provide model plain language for signature loans (Chapter 342, Subchapter F).

Section 90.302 (current §1.1205) identifies the types of provisions that may be included in a Subchapter F contract.

Section 90.303 (current §1.1206) contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical Subchapter F contract provisions.

In order to implement changes resulting from House Bill 955 as enacted by the 79th Texas Legislature, §90.303(3) has been revised concerning the late charge provision. Lenders may now use the following language (Option 2): "If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment." The corresponding figure contained in §90.304(a)(7) has also been revised to reflect this statutory change (see §90.304 below).

Section 90.304 (current §1.1207) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides lenders with flexibility in using a model contract and includes figures containing entire plain language model contracts for Subchapter F transactions.

The model contract contained in §90.304(a)(7) has been revised to reflect a statutory change resulting from the enactment of House Bill 955 by the 79th Texas Legislature (see explanation under §90.303 above). In addition, other wording changes have been made throughout this model contract for Chapter 342, Subchapter F transactions, in order to make the language more consistent (where legally permissible) with the model contracts for Chapter 342, Subchapter E transactions, as found in §90.204.

Because these rules provide model clauses and model contracts, licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

However, should a licensee decide to modify its contract forms based on the revisions to the model contracts, additional economic costs may be incurred as a consequence of §§90.301 - 90.304. The potential additional costs resulting from a licensee's decision to implement the revised model language are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract. There would be no adverse effect on small businesses as compared to the effect on large businesses for those licensees choosing to modify their contracts.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapter F.

§90.301. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter F transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. The use of the "plain language" model contract by a creditor is not mandatory. The creditor, however, may not use a contract other than a model contract unless the creditor has submitted the contract to the commissioner in compliance with §90.104 of this title. The commissioner shall issue an order disapproving the

contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A creditor may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) The provisions in this subchapter are intended to constitute a complete plain language Chapter 342, Subchapter F contract; however, a creditor is not limited to the contract provisions addressed by these rules.

§90.302. Contract Provisions.

A Chapter 342, Subchapter F contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the lender desires to exercise its rights under one of the following provisions, it must include the provision in the contract. A lender who does not desire to apply a provision is not required to include it in the contract. For example, if a lender does not take a security interest in the borrower's personal property, the provisions addressing security interests are not required.

(1) Identification of the parties, including the name and address of each party;

(2) A Truth in Lending Act (TILA) disclosure box;

(3) A definition section specifying the pronouns that designate the borrower and the lender;

(4) A promise to pay;

(5) A late charge provision;

(6) A provision for after maturity interest;

(7) A provision specifying that prepayment is permitted;

(8) A provision specifying the finance charge earnings and refund method;

(9) A provision authorizing deferments;

(10) A provision specifying the conditions causing default;

(11) A waiver of notice of intent to accelerate and waiver of notice of acceleration;

(12) A provision contracting for a fee for a dishonored check;

(13) A signature block;

(14) A security agreement including provisions addressing:

(A) a statement that the collateral is free from encumbrances;

(B) the location and restrictions on movement or transfer of the collateral; and

(C) a statement that the borrower will appropriately maintain and use the collateral;

(15) A provision regarding the mailing of notices to the borrower;

(16) Statement of truthful information;

(17) A provision expressing no waiver of the lender's rights;

(18) A clause stating that all modifications to the contract must be in writing;

(19) A provision stating Texas law and federal law will apply to the contract;

(20) A clause providing for joint liability;

(21) A usury savings clause;

(22) Complaints and inquiries notice;

(23) An arbitration agreement; and

(24) A clause stating that if any part of the contract is invalid, all other parts remain valid.

§90.303. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter F signature loan contract:

(1) The model clauses refer to the Borrower as "I" or "me." The Lender is referred to as "you" or "your."

(2) Promise to pay. The model clause for the borrower's promise to pay reads: "I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(3) Late charge. At the lender's option, the late charge clause may be made applicable only to loans with more than one installment. As other options, a lender may include one of the model late charge clause options as set out in the subparagraphs below in both single and multiple installment loans, so long as the lender does not collect a default charge on a single payment loan or the lender may omit the late charge clause for loans with a single repayment. The lender may use one of the following late charge model provisions:

(A) Option 1: "If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(B) Option 2: "If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment."

(4) After maturity interest. The after maturity interest model clause reads: "If I don't pay all I owe by the date the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due."

(5) Prepayment clause. The model prepayment clause reads: "I can make a whole payment early."

(6) Finance charge earnings and refund method. The model finance charge earnings and refund method clause reads: "The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1." At the lender's option, the lender may include the following model finance charge and refund method language if the lender makes loans of \$30 or less: "The acquisition charge on this loan will not be refunded if I pay off early. If this loan is for more than \$30 and I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the

sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1."

(7) Deferment clause. The deferment model clause reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(8) Default clause. The model default clause reads: "If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises."

(9) Waiver of notice of intent to accelerate and waiver of notice of acceleration clause. The model waiver of notice of intent to accelerate and waiver of notice of acceleration clause reads: "I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(10) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. The lender may always choose a lesser amount. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately."

(11) Signature block. At the lender's option a witness signature block may be added.

(12) Clause describing collateral. In the TILA disclosure box, the model clause describing the collateral reads: "You will have a security interest in the following described collateral _____." At the creditor's option, if the promissory note is unsecured, the lender may use the following clause: "This note is unsecured."

(13) Security agreement clause. The model clause setting out the security agreement in case of default reads: "If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements."

(14) Mailing of notice to borrower. The model agreement regarding mailing of notice to the borrower reads: "You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it."

(15) Statement of truthful information. The following clause is sufficient as the borrower's agreement that the information provided to the lender is true: "I promise that all information I gave you is true."

(16) No waiver of lender's rights. The model agreement regarding the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(17) Modifications in writing. The model agreement requiring any change to be in writing reads: "Any change to this agreement has to be in writing. Both you and I have to sign it."

(18) Application of law. The model clause regarding the law to be applied to the contract reads: "Federal law and Texas law apply to this contract."

(19) Joint liability. The model joint liability agreement reads: "I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document."

(20) Usury savings clause. The model usury savings clause reads: "I don't have to pay interest or other amounts that are more than the law allows."

(21) Complaints and inquiries notice. "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (512) 936-7600 - (800) 538-1579."

(22) Security agreement. The model clause setting out the security agreement reads: "We are entering into this security agreement at the same time that we are entering into a loan. In exchange for the loan referenced above, I agree to the follow terms and conditions: To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, anything that becomes attached to it, and all proceeds of the collateral. This security interest also secures all other debt I owe you now. I understand that all collateral that I have given to secure loans may also be used to secure this and any other loans you may make to me. I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you. I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission. I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally. Any change to this security agreement has to be in writing. Both you and I have to sign it. Any default under my agreements with you will be a default of this security agreement. Federal law and Texas law apply to this security agreement. If I don't keep any of my promises, you can take the collateral. You will only take the collateral lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows, and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest."

§90.304. Permissible Changes.

(a) An authorized lender may consider making the following types of changes to the signature loans plain language model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the creditor's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model contract is presented in the following example.
Figure: 7 TAC §90.304(a)(7)

(8) A sample model security agreement is presented in the following example.

Figure: 7 TAC §90.304(a)(8)

(b) An authorized lender has considerable flexibility to arrange the format of the model form if the revised format does not significantly affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602391

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §§90.401 - 90.404

The Finance Commission of Texas proposes new 7 TAC Chapter 90, Subchapter D, §§90.401 - 90.404 concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.401 - 90.404 outline model plain language provisions for second lien home equity loans (Subchapter G).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC Subchapter Q, §1.1221 and §§1.1225 - 1.1227. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

In general, the purpose of §§90.401 - 90.404 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the

rules, model clauses, or contracts and thus, further explanation is unnecessary.

New 7 TAC §§90.401 - 90.404 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts for Chapter 342, Subchapter G second lien home equity loans.

Section 90.401 (current §1.1221) outlines the purpose of new Subchapter D, which is to provide model plain language for second lien home equity loans (Chapter 342, Subchapter G).

Section 90.402 (current §1.1225) identifies the types of provisions that may be included in a Subchapter G second lien home equity loan contract.

Section 90.403 (current §1.1226) contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical contract provisions for these transactions.

Section 90.403(b)(12) concerning credit insurance has been revised in order to clarify the optional language with respect to past due premiums. Although four times is the industry standard regarding the relationship between total past due premiums and the first month's premium in this equation, the lender does have the opportunity to use a different number or time frame if more appropriate. Thus, the use of "four times" in the optional language quoted has been removed and replaced with "(insert number)." The corresponding figures contained in §90.403(b)(12) and §90.404(a)(7) have also been revised to reflect this change (see §90.404 below).

The figures contained in §90.403(b)(8)(A) - (C) concerning the finance charge and refund method have been revised in order to correct an error with respect to refunding prepaid interest. Since points as well as loan origination fees are paid as prepaid interest and are refundable if the loan is paid in full early, the word "points" in the second paragraph, third sentence, has been removed and replaced with "prepaid interest." The corresponding model contract contained in §90.404(a)(7) has also been revised to reflect this change (see §90.404 below).

Section 90.404 (current §1.1227) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using a model contract and includes figures containing entire plain language model contracts for Subchapter G second lien home equity loan contracts. Licensees may use additional documents, including affidavits, in connection with the model documents contained in this rule. The additional documents may provide the parties with additional certainty on certain issues including whether the home equity loan was made on the conditions expressed in Texas Constitution, Article XVI, §50(a)(6)(Q). Licensees may change the model documents so that they are in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").

The model contract contained in §90.404(a)(7) has been revised concerning credit insurance to reflect a clarification for the optional language with respect to past due premiums (see explanation under §90.403 above). This model contract has also been revised concerning the finance charge and refund method in order to correct an error with respect to refunding prepaid interest (see explanation under §90.403 above).

Because these rules provide model clauses and model contracts, licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the

model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

However, should a licensee decide to modify its contract forms based on the revisions to the model contracts, additional economic costs may be incurred as a consequence of §§90.401 - 90.404. The potential additional costs resulting from a licensee's decision to implement the revised model language are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract. There would be no adverse effect on small businesses as compared to the effect on large businesses for those licensees choosing to modify their contracts.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapter G.

§90.401. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G (secondary mortgage loans with an effective rate of greater than 10%) home equity loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with §90.104 of this title. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) The provisions in this subchapter are intended to constitute a complete plain language Chapter 342, Subchapter G home equity loan contract; however, a licensee is not limited to the contract provisions addressed by these rules.

§90.402. Contract Provisions.

(a) A Chapter 342, Subchapter G home equity loan contract may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the dishonored check fee clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender;

(2) A Truth in Lending Act (TILA) disclosure box;

(3) An Itemization of Amount Financed box;

(4) A promise to pay;

(5) A late charge provision;

(6) A provision for after maturity interest;

(7) A prepayment clause;

(8) A provision specifying the finance charge earnings and refund method;

(9) A provision contracting for a fee for a dishonored check;

(10) A provision specifying the conditions causing default;

(11) A provision regarding property insurance;

(12) A credit insurance disclosure box;

(13) A provision regarding the mailing of notices to the borrower;

(14) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(15) A provision expressing no waiver of the licensee's rights;

- (16) A collection expense clause;
- (17) A provision providing for joint liability;
- (18) A usury savings clause;
- (19) A savings clause stating that if any part of the loan agreement is declared invalid, the rest remains valid;
- (20) An integration clause stating that the contract supercedes all prior agreements and that the contract may not be changed by oral agreement;
- (21) A provision stating that the homestead described in the loan agreement is subject to the lien of the security document;
- (22) A provision specifying that federal law and Texas law apply to the contract;
- (23) Complaints and inquiries notice;
- (24) A provision describing the collateral; and
- (25) Signature blocks.

(b) The security document for a Chapter 342, Subchapter G second lien home equity loan contract may contain the following provisions:

- (1) A definitions section;
- (2) A provision regarding the secured nature of the agreement;
- (3) A provision regarding the transfer of rights in the property;
- (4) Borrower and Lender's promise;
- (5) A provision regarding late charges and prepayment of principal and interest;
- (6) A provision regarding the funds for escrow items;
- (7) A provision regarding charges and liens;
- (8) A provision regarding property insurance;
- (9) A provision stating that the borrower occupies the property as his homestead;
- (10) A provision regarding preservation, maintenance, protection, and inspection of the property;
- (11) A provision specifying the conditions causing actual fraud;
- (12) A provision regarding protection of the lender's interest in the property and rights under the security document;
- (13) A provision regarding the assignment of miscellaneous proceeds and forfeiture;
- (14) A provision specifying that the borrower is not released from liability if the lender modifies the payment schedule;
- (15) A provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the homestead and binds his successors and assigns;
- (16) A provision regarding the extension of credit charges;
- (17) A provision regarding the delivery of notices;
- (18) A provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid;

- (19) A provision regarding rules of clause construction;
- (20) A provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made;
- (21) A provision regarding a transfer of interest in the property;
- (22) A provision regarding the borrower's right to reinstate after acceleration;
- (23) A provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply;
- (24) A provision regarding hazardous substances;
- (25) A provision regarding acceleration and remedies;
- (26) A provision regarding power of sale;
- (27) A provision regarding the release of the lien securing the loan agreement;
- (28) A provision specifying that the loan agreement is given without personal liability against each owner of the homestead and against the spouse of each owner;
- (29) A provision specifying that the borrower has not been required to repay another debt with the proceeds of the loan;
- (30) A provision specifying that the borrower has not assigned wages as security for the loan agreement;
- (31) A provision specifying that lender and borrower have agreed in writing to the fair market value of the homestead;
- (32) A provision regarding trustees and trustee liability;
- (33) A provision regarding the lender's waiving additional collateral;
- (34) A default provision;
- (35) Signature blocks;
- (36) A non-purchase disclosure; and
- (37) A provision regarding notice of confidentiality rights.

§90.403. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien home equity loan contract:

(1) The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, and the name and address of the borrower. The model clause identifying the pronouns used for the borrower and lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder." The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

(2) The model Truth in Lending Act (TILA) disclosure box reads:

Figure: 7 TAC §90.403(b)(2)

(3) Itemization of Amount Financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the Texas scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause for the borrower's promise to pay reads: "This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution."

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(5) Late charge. Licensees using contracts using the true daily earnings method are not permitted to assess a late charge. The model late charge provision for contracts using the scheduled installments earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) After maturity interest. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) Finance charge and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.403(b)(8)(A)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.403(b)(8)(B)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:

Figure: 7 TAC §90.403(b)(8)(C)

(9) Dishonored check fee. The model clause specifies the maximum allowable dishonored check fee. A licensed lender may always choose a lesser amount. The model dishonored check fee provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(10) Default clause. The model provision specifying the conditions causing default reads:

Figure: 7 TAC §90.403(b)(10)

(11) Property insurance. The model provision regarding property insurance reads:

Figure: 7 TAC §90.403(b)(11)

(12) Credit insurance. If single premium credit insurance is allowable, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. Licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four (4) times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:

Figure: 7 TAC §90.403(b)(12)

(13) Mailing of notices to borrower. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail."

(14) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(15) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(16) Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement."

(17) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and against the spouse of each owner unless the owner or spouse obtained this loan by actual fraud. If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement."

(18) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than the law allows."

(19) Savings clause. The model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) Contract supersedes prior agreements. For loan agreements exceeding \$50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements."

(21) Security document. The model provision stating that the homestead described in the loan agreement is subject to the lien of the security document reads: "The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities."

(22) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law."

(23) Complaints and inquiries notice. The model complaints and inquiries notice reads: "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occ.state.tx.us, (512) 936-7600 - (800) 538-1579."

(24) Clause describing collateral. The model provision describing the collateral reads: "The homestead described above by the property address is subject to the lien of the Security Document."

(25) Signature blocks. Licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.403(b)(25)

(c) For the security document for a Chapter 342, Subchapter G second lien home equity loan contract:

(1) The model definitions section reads:

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute.
Figure: 7 TAC §90.403(c)(1)(I)

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ____ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of My Homestead; condemnation or other taking of all or any part of My Homestead; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease".

(2) Secured agreement. The model provision regarding the secured nature of the agreement reads: "To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution."

(3) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads: Figure: 7 TAC §90.403(c)(3)

(4) Borrower and Lender's promise. The model provision regarding the borrower and the lender's promise to comply with the terms of the security document reads: "YOU AND I PROMISE:"

(5) Late charges and prepayment. The model provision regarding late charges and prepayment of principal and interest reads: Figure: 7 TAC §90.403(c)(5)

(6) Funds for escrow items. The model provision regarding the funds for escrow items reads: Figure: 7 TAC §90.403(c)(6)

(7) Charges and liens. The model provision regarding charges and liens reads: Figure: 7 TAC §90.403(c)(7)

(8) Property insurance. The model provision regarding property insurance reads: Figure: 7 TAC §90.403(c)(8)

(9) Homestead. The model provision stating that the borrower occupies the property as his homestead reads: "I now occupy and use the property secured by this Security Document as my Texas homestead."

(10) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead.

You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs."

(11) Conditions causing actual fraud. The model provision specifying the conditions causing actual fraud reads: Figure: 7 TAC §90.403(c)(11)

(12) Protection of lender's interest in the property and rights under the security document. The model provision regarding protection of the lender's interest in the property and rights under the security document reads: Figure: 7 TAC §90.403(c)(12)

(13) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads: Figure: 7 TAC §90.403(c)(13)

(14) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later."

(15) Joint and several liability, security document execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the homestead and binds his successors and assigns reads: Figure: 7 TAC §90.403(c)(15)

(16) Extension of credit charges. The model provision regarding the extension of credit charges reads: Figure: 7 TAC §90.403(c)(16)

(17) Delivery of notices. The model provision regarding the delivery of notices reads: "Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement."

(18) Governing law and severability. The model provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid reads: "The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective."

(19) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.403(c)(19)

(20) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the Loan Agreement is made, you will give me copies of all documents I sign."

(21) Transfer of interest in property. The model provision regarding a transfer of interest in the property reads: "'Interest in My Homestead' means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand."

(22) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.403(c)(22)

(23) Sale of note, change of loan servicer, notice of grievance, lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads:
Figure: 7 TAC §90.403(c)(23)

(24) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.403(c)(24)

(25) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.403(c)(25)

(26) Power of sale. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.403(c)(26)

(27) Release. The model provision regarding the release of the lien securing the loan agreement reads: "You will cancel and return the Note to and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution."

(28) Non-recourse liability. The model provision specifying that the loan agreement is given without personal liability against each owner of the homestead and against the spouse of each owner reads:
Figure: 7 TAC §90.403(c)(28)

(29) Proceeds. The model provision specifying that the borrower has not been required to repay another debt with the proceeds of the loan reads: "I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender."

(30) No assignment of wages. The model provision specifying that the borrower has not assigned wages as security for the loan

agreement reads: "I have not assigned wages as security for the Loan Agreement."

(31) Acknowledgment of fair market value. The model provision specifying that lender and the borrower have agreed in writing to the fair market value of the homestead reads: "You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement."

(32) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.403(c)(32)

(33) Waiver of additional collateral. The model provision regarding the lender's waiving additional collateral reads:
Figure: 7 TAC §90.403(c)(33)

(34) Default. The model default provision reads: "Any default of my agreements with you will be a default of this Security Document."

(35) Signature blocks. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.403(c)(35)

(36) Non-purchase disclosure. The model provision indicating that the security document does not finance a purchase transaction should appear at the beginning of the document, below the heading and prior to the definitions section. The model non-purchase disclosure provision reads: "This Security Document is not intended to finance Borrower's acquisition of the Property."

(37) Notice of confidentiality rights clause. On or after January 1, 2004, the security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under §11.008(b) of the Texas Property Code. The model notice of confidentiality rights clause reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.404. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the second lien home equity loans plain language model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model note is presented in the following example.

Figure: 7 TAC §90.404(a)(7)

(8) A sample model security document is presented in the following example.

Figure: 7 TAC §90.404(a)(8)

(b) An authorized licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602392

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §§90.501 - 90.504

The Finance Commission of Texas proposes new 7 TAC Chapter 90, Subchapter E, §§90.501 - 90.504, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.501 - 90.504 outline model plain language provisions for second lien purchase money loans (Subchapter G).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC Subchapter Q, §1.1231 and §§1.1235 - 1.1237. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

In general, the purpose of §§90.501 - 90.504 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from

the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the rules, model clauses, or contracts and thus, further explanation is unnecessary.

New 7 TAC §§90.501 - 90.504 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts for Chapter 342, Subchapter G second lien purchase money loans.

Section 90.501 (current §1.1231) outlines the purpose of new Subchapter E, which is to provide model plain language for second lien purchase money loans (Chapter 342, Subchapter G).

Section 90.502 (current §1.1235) identifies the types of provisions that may be included in a Subchapter G second lien purchase money loan contract.

Section 90.503 (current §1.1236) contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical contract provisions for these transactions.

Section 90.503(b)(12) concerning credit insurance has been revised in order to clarify the optional language with respect to past due premiums. Although four times is the industry standard regarding the relationship between total past due premiums and the first month's premium in this equation, the lender does have the opportunity to use a different number or time frame if more appropriate. Thus, "four times" has been removed from the optional language quoted and replaced with "(insert number)." The corresponding figures contained in §90.503(b)(12) and §90.504(a)(7) have also been revised to reflect this change (see §90.504 below).

Section 90.503(b)(21) has been revised concerning the security document/prior agreements provision to correct an oversight. As required by Texas Business and Commerce Code, §26.02, the following language has been added to the rule: "For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, or otherwise set out from the surrounding written material to be conspicuous." This model clause concerning prior agreements has been bolded in the corresponding model contracts contained in §90.504(a)(7) and (8) (see §90.504 below).

Section 90.503(c)(21) concerning partial invalidity has been revised in order to clarify the model language with respect to the refunding of excess interest. The corresponding figures contained in §90.503(c)(21) and §90.504(a)(8) have also been revised to reflect this change (see §90.504 below).

Section 90.504 (current §1.1237) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using a model contract and includes figures containing entire plain language model contracts for Subchapter G purchase money home equity loan contracts. Licensees may use additional documents, including affidavits, in connection with the model documents contained in this rule. The additional documents may provide the parties with additional certainty on certain issues. Licensees may change the model documents so that they are in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").

The model contract contained in §90.504(a)(7) has been revised concerning credit insurance to reflect a clarification for

the optional language with respect to past due premiums (see explanation under §90.503 above). This model contract has also been revised by bolding the model clause concerning prior agreements in order to correct an oversight (see explanation under §90.503 above).

The model contract contained in §90.504(a)(8) has been revised concerning partial invalidity to reflect a clarification for the refunding of excess interest (see §90.503 above). This model contract has also been revised by bolding the model clause concerning prior agreements in order to correct an oversight (see explanation under §90.503 above).

Because these rules provide model clauses and model contracts, licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

However, should a licensee decide to modify its contract forms based on the revisions to the model contracts, additional economic costs may be incurred as a consequence of §§90.501 - 90.504. The potential additional costs resulting from a licensee's decision to implement the revised model language are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract. There would be no adverse effect on small businesses as compared to the effect on large businesses for those licensees choosing to modify their contracts.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the

date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapter G.

§90.501. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G purchase money loan transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with §90.104 of this title. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes an approval.

(b) The provisions in this subchapter are intended to constitute a complete plain language Chapter 342, Subchapter G purchase money loan contract; however, a licensee is not limited to the contract provisions addressed by these rules.

§90.502. Contract Provisions.

(a) A Chapter 342, Subchapter G purchase money loan transaction may include, but is not limited to, the following contract provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the dishonored check fee clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G second lien purchase money loan transaction may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the borrower and the lender, and the property address.

(2) A Truth in Lending Act (TILA) disclosure box;

(3) An Itemization of Amount Financed box;

(4) A promise to pay;

(5) A late charge provision;

(6) A provision for after maturity interest;

(7) A prepayment clause;

(8) A provision specifying the finance charge earnings and refund method;

check;

(9) A provision contracting for a fee for a dishonored

(10) A provision specifying the conditions causing default;

(11) A provision regarding property insurance;

(12) A credit insurance disclosure box;

(13) A provision regarding the mailing of notices to the borrower;

(14) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(15) A provision expressing no waiver of the licensee's rights;

(16) A collection expense clause;

(17) A provision providing for joint liability;

(18) A usury savings clause;

(19) A savings clause stating that if any part of the loan agreement is declared invalid, the rest remains valid;

(20) An integration clause stating that the contract supercedes all prior agreements and that the contract may not be changed by oral agreement;

(21) A provision stating that the property described in the loan agreement is subject to the lien of the security document;

(22) A provision specifying that federal law and Texas law apply to the contract;

(23) Complaints and inquiries notice;

(24) A provision describing the collateral; and

(25) Signature blocks.

(b) The security document for a Chapter 342, Subchapter G second lien purchase money loan contract may contain the following provisions:

(1) A definitions section;

(2) A provision regarding the secured nature of the agreement;

(3) A provision regarding the transfer of rights in the property;

(4) Borrower and Lender's promise;

(5) A provision regarding late charges and prepayment of principal and interest;

(6) A provision regarding the funds for escrow items;

(7) A provision regarding charges and liens;

(8) A provision regarding property insurance;

(9) A provision regarding preservation, maintenance, protection, and inspection of the property;

(10) A provision regarding protection of the lender's interest in the property and rights under the security document;

(11) A provision regarding the assignment of miscellaneous proceeds and forfeiture;

(12) A provision specifying that the borrower is not released from liability if the lender modifies the payment schedule;

(13) A provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the homestead and binds his successors and assigns;

(14) A provision regarding the extension of credit charges;

(15) A provision regarding the delivery of notices;

(16) A provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid;

(17) A provision regarding rules of clause construction;

(18) A provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made;

(19) A provision regarding a transfer of interest in the property;

(20) A provision regarding the borrower's right to reinstate after acceleration;

(21) A provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply;

(22) A provision regarding hazardous substances;

(23) A provision regarding acceleration and remedies;

(24) A provision regarding the assignment of rents, appointment of receiver, and lender in possession;

(25) A provision regarding power of sale;

(26) A provision regarding the release of the lien securing the loan agreement;

(27) A provision regarding the lender's rights and the borrower's responsibilities;

(28) A provision regarding trustees and trustee liability;

(29) A default provision;

(30) A provision regarding subrogation;

(31) A provision regarding what happens if the sum secured and other charges violate applicable law;

(32) A request for notice of default and foreclosure under superior mortgages or security documents provision;

(33) Signature blocks;

(34) An acknowledgment; and

(35) A provision regarding notice of confidentiality rights.

§90.503. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, and the property address. The model clause identifying the pronouns used for the borrower and lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder"." "The Lender is _____. The Lender may sell

or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

(2) The model Truth in Lending Act (TILA) disclosure box reads:
Figure: 7 TAC §90.503(b)(2)

(3) Itemization of Amount Financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(5) Late charge. Licensees using contracts using the true daily earnings method are not permitted to assess a late charge. The model late charge provision for contracts using the scheduled installment earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) Finance charge and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(A)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(B)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(C)

(9) Dishonored check fee. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model dishonored check fee provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(10) Default clause. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.503(b)(10)

(11) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.503(b)(11)

(12) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four (4) times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.503(b)(12)

(13) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(14) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(15) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(16) Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(17) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(18) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(19) Savings clause. The model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) Contract supersedes prior agreements. For loan agreements exceeding \$50,000.00, this notice must be boldfaced, capitalized, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements."

(21) Security document. The model provision stating that the property described in the loan agreement is subject to the lien of the security document reads: "In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note."

(22) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(23) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207; Telephone No.: (800) 538-1579; Fax No.: (512) 936-7610; E-mail: consumer.complaints@occc.state.tx.us; Website: www.occc.state.tx.us."

(24) Clause describing collateral. The model provision describing the collateral reads: "The collateral described above by the property address is subject to the lien of the Security Document."

(25) Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.503(b)(25)

(c) For the security document for a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) The model definitions section reads:

(A) "'Loan Agreement' means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute.
Figure: 7 TAC §90.503(c)(1)(H)

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section ____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease".

(2) Secured agreement. The model provision regarding the secured nature of the agreement reads: "To secure this Loan Agreement, I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds."

(3) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §90.503(c)(3)

(4) Borrower and Lender's promise. The model provision regarding the borrower and lender's promise to comply with the terms of the security document reads: "YOU AND I PROMISE".

(5) Late charges and prepayment. The model provision regarding late charges and prepayment of principal and interest reads:
Figure: 7 TAC §90.503(c)(5)

(6) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.503(c)(6)

(7) Charges and liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §90.503(c)(7)

(8) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.503(c)(8)

(9) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any

other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs."

(10) Protection of lender's interest in the property and rights under the security document. The model provision regarding protection of the lender's interest in the property and rights under the security document reads:
Figure: 7 TAC §90.503(c)(10)

(11) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §90.503(c)(11)

(12) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later."

(13) Joint and several liability, security document execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the property and binds his successors and assigns reads:
Figure: 7 TAC §90.503(c)(13)

(14) Extension of credit charges. The model provision for the extension of credit charges reads:
Figure: 7 TAC §90.503(c)(14)

(15) Delivery of notices. The model provision regarding the delivery of notices reads: "Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement."

(16) Governing law and severability. The model provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid reads: "The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective."

(17) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.503(c)(17)

(18) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the

Loan Agreement is made, you will give me copies of all documents I sign."

(19) Transfer of interest in property. The model provision regarding a transfer of interest in the property reads: "'Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand."

(20) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.503(c)(20)

(21) Sale of note, change of loan servicer, notice of grievance, lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads: "A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section. No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law. You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement. Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

(22) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.503(c)(22)

(23) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.503(c)(23)

(24) Assignment of rents, appointment of receiver, lender in possession. The model provision regarding assignment of rents, appointment of receiver, and lender in possession reads: "As additional

security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received."

(25) Power of sale. Lender has the option to choose wording to indicate that a Trustee's deed will convey good title to the Property that cannot be defeated. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.503(c)(25)

(26) Release. If the lender cannot return the note to the borrower, the lender may provide the borrower with a discharge and release of all obligations under the loan. The discharge must meet the requirements of Texas Finance Code, §342.454. The model provision regarding the release of the lien securing the loan agreement reads: "Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligations under the loan. I will pay only the cost of recording the release of lien."

(27) Lender's rights and borrower's responsibilities. The model provision specifying that each person who signs the document is responsible for each promise and duty in the security document reads:
Figure: 7 TAC §90.503(c)(27)

(28) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.503(c)(28)

(29) Default. The model default provision reads: "Any default of my agreements with you will be a default of this Security Document."

(30) Subrogation. The model provision regarding subrogation reads: "If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment."

(31) Partial invalidity. The model provision regarding what happens if the sums secured and other charges violate applicable law reads: "If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt."

(32) Request for notice of default and foreclosure under superior mortgages or security documents. The model provision reads:
Figure: 7 TAC §90.503(c)(32)

(33) Signature blocks. The model provision regarding signature blocks reads:

Figure: 7 TAC §90.503(c)(33)

(34) Acknowledgment. The model provision regarding the acknowledgment reads:

Figure: 7 TAC §90.503(c)(34)

(35) Notice of confidentiality rights clause. On or after January 1, 2004, the security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under §11.008(b) of the Texas Property Code. The model notice of confidentiality rights clause reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.504. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

(1) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(3) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(4) Inserting descriptive headings or number provisions.

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(6) Other changes which do not affect the substance of the disclosures.

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.504(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.504(a)(8)

(b) A licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602393

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §§90.601 - 90.604

The Finance Commission of Texas proposes new 7 TAC Chapter 90, Subchapter F, §§90.601 - 90.604, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.601 - 90.604 outline model plain language provisions for second lien home improvement loan contracts (Subchapter G).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC Subchapter Q, §1.1241 and §§1.1245 - 1.1247. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

In general, the purpose of §§90.601 - 90.604 is to implement the provisions of Texas Finance Code §341.502, which requires contracts for consumer loans under Chapter 342, whether in English or in Spanish, to be written in plain language. Use of the model contracts is optional. However, should a lender choose not to use the model contracts, contracts must be submitted to the agency in accordance with the provisions of 7 TAC §90.104.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the rules, model clauses, or contracts and thus, further explanation is unnecessary.

New 7 TAC §§90.601 - 90.604 include plain language contract provisions, disclosures, model clauses, permissible changes, and model contracts for Chapter 342, Subchapter G second lien home improvement contracts.

Section 90.601 (current §1.1241) outlines the purpose of new Subchapter F, which is to provide model plain language for second lien home improvement contracts (Chapter 342, Subchapter G).

Section 90.602 (current §1.1245) identifies the types of provisions that may be included in a Subchapter G second lien home improvement loan contract.

Section 90.603 (current §1.1246) contains the model clauses. These clauses are the agency's interpretation of a plain language version of typical contract provisions for these transactions.

Section 90.603(e)(24) has been revised concerning the prior agreements provision to correct an oversight. As required by Texas Business and Commerce Code, §26.02, the following language has been added to the rule: "For loan agreements exceeding \$50,000, this notice must be boldfaced, capitalized, or otherwise set out from the surrounding written material to be conspicuous." The corresponding model contracts contained in §90.604(a)(13) and (15) already had this language in bold and did not need revision.

Section 90.603(f)(27) concerning partial invalidity has been revised in order to clarify the model language with respect to the refunding of excess interest. The corresponding figures contained in §90.603(f)(27) and §90.604(a)(16) have also been revised to reflect this change (see §90.604 below).

Section 90.604 (current §1.1247) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using a model contract and includes figures containing entire plain language model contracts for Subchapter G second lien home improvement loan contracts. Licensees may use additional documents, including affidavits, in connection with the model documents contained in this rule. The additional documents may provide the parties with additional certainty on certain issues. Licensees may change the model documents so that they are in compliance with Mortgage Electronic Registration Systems, Inc. ("MERS").

The model contract contained in §90.604(a)(16) has been revised concerning partial invalidity to reflect a clarification for the refunding of excess interest (see §90.603 above).

Because these rules provide model clauses and model contracts, licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model contracts, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 15, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws, simpler credit contracts, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some clarifying revisions. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the sections as proposed.

However, should a licensee decide to modify its contract forms based on the revisions to the model contracts, additional economic costs may be incurred as a consequence of §§90.601 - 90.604. The potential additional costs resulting from a licensee's decision to implement the revised model language are limited to costs associated with copying a contract and costs attributable to loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract. There would be no adverse effect on small businesses as compared to the effect on large businesses for those licensees choosing to modify their contracts.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the contracts. Whether programmers will use the adopted form or submit non-standard contracts for review is not predictable. Whether the programmers will charge an additional fee for a contract they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapter G.

§90.601. Purpose.

(a) The purpose of the rules contained in this subchapter is to provide a model plain language contract in English for Texas Finance Code, Chapter 342, Subchapter G home improvement transactions. The establishment of model provisions for these transactions will encourage use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a licensee is not mandatory. The licensee, however, may not use a contract other than a model contract unless the licensee has submitted the contract to the commissioner in compliance with §90.104 of this title. The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A licensee may not claim the commissioner's failure to disapprove a contract constitutes approval.

(b) The provisions in this subchapter are intended to constitute a complete plain language Chapter 342, Subchapter G home improvement transaction; however, a licensee is not limited to the contract provisions addressed by these rules.

§90.602. Contract Provisions.

A Chapter 342, Subchapter G second lien home improvement loan transaction may include, but is not limited to, the following contract

provisions to the extent not prohibited by law or regulation. If the licensee desires to exercise its rights under one of the following provisions, it must include that provision in the contract. A licensee who does not desire to apply a provision is not required to include it in the contract. For example, a licensee who does not assess a fee for dishonored checks may omit the dishonored check fee clause. A licensee may also exclude non-relevant portions of a model clause. For example, a licensee who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Chapter 342, Subchapter G home improvement loan transaction may contain the following provisions:

(1) For a contract for use in a transaction that does not allow withdrawals or multiple advances:

- (A) An identification clause;
- (B) A definition section;
- (C) A provision regarding construction of improvements;
- (D) A clause regarding the contract price;
- (E) A transfer of lien clause;
- (F) A provision specifying that completion is made by the contractor, not the lender;
- (G) A partial lien clause;
- (H) A provision regarding charges and extras;
- (I) A provision regarding receipts and releases;
- (J) A provision specifying that no work has been done prior to execution of the contract;
- (K) A provision regarding the trustee's duties;
- (L) A notice specifying the preservation of claims and defenses;
- (M) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract;
- (N) An assignment; and
- (O) A provision regarding notice of confidentiality rights.

(2) For a promissory note for use in a transaction that does not allow withdrawals or multiple advances:

- (A) An identification clause;
- (B) A Truth in Lending Act (TILA) disclosure box;
- (C) An Itemization of Amount Financed box;
- (D) A security for payment provision;
- (E) A definitions section;
- (F) A promise to pay;
- (G) A late charge provision;
- (H) A provision for after maturity interest;
- (I) A prepayment clause;
- (J) A provision specifying the finance charge earnings and refund method;
- (K) A deferment clause;
- (L) A provision contracting for a fee for a dishonored check;

(M) A provision specifying the conditions causing default;

- (N) A provision regarding property insurance;
- (O) A credit insurance disclosure box;
- (P) A provision regarding the mailing of notices to the borrower;

(Q) A provision specifying that the borrower's statements are truthful;

(R) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;

(S) A provision expressing no waiver of the licensee's rights;

- (T) A collection expense clause;
- (U) A provision providing for joint liability;
- (V) A usury savings clause;

(W) A savings clause stating that if any part of the loan agreement is declared invalid, the rest remains valid;

(X) An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;

(Y) provision specifying that federal law and Texas law apply to the contract;

(Z) Complaints and inquiries notice;

(AA) A provision describing the collateral;

(BB) A notice regarding the preservation of claims and defenses; and

(CC) Signature blocks.

(3) For a contract for use in a transaction that allows for withdrawals or multiple advances:

- (A) An identification clause;
- (B) A definitions section;
- (C) A provision regarding construction of improvements;

(D) A clause regarding the contract price;

(E) A clause regarding the note payable to the lender;

(F) A clause regarding the note being secured by the lien;

(G) A transfer of lien clause;

(H) A clause regarding exceptions to conveyance and warranty;

(I) A provision specifying that completion is made by the contractor, not the lender;

(J) A partial lien clause;

(K) A provision regarding charges and extras;

(L) A provision regarding receipts and releases;

(M) A provision specifying that no work has been done prior to execution of the contract;

(N) A provision regarding the owner's promises and rights;

(O) A provision regarding the owner's duties;
(P) A provision regarding the contractor's duties;
(Q) A provision regarding the contractor's rights;
(R) A provision regarding the trustee's duties;
(S) General provisions;
(T) A notice specifying the preservation of claims and defenses;
(U) A notice specifying that the owner and the contractor are responsible for meeting the terms of the contract; and
(V) An assignment.

(4) For a promissory note for use in a transaction that allows for withdrawals or multiple advances:

(A) An identification clause;
(B) A Truth in Lending Act (TILA) disclosure box;
(C) An Itemization of Amount Financed box;
(D) A security for payment provision;
(E) A definition section;
(F) A promise to pay;
(G) A late charge provision;
(H) A provision for after maturity interest;
(I) A prepayment clause;
(J) A provision specifying the finance charge earnings and refund method;
(K) A deferment clause;
(L) A provision contracting for a fee for a dishonored check;
(M) A provision specifying the conditions causing default;
(N) A provision regarding property insurance;
(O) A credit insurance disclosure box;
(P) A provision regarding the mailing of notices to the borrower;
(Q) A provision specifying that the borrower's statements are truthful;
(R) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;
(S) A provision expressing no waiver of the licensee's rights;
(T) A collection expense clause;
(U) A provision providing for joint liability;
(V) A usury savings clause;
(W) A savings clause stating that if any part of the loan agreement is declared invalid, the rest remains valid;
(X) An integration clause stating that the contract supersedes all prior agreements and that the contract may not be changed by oral agreement;
(Y) A provision specifying that the note is secured by a deed of trust;

(Z) A provision specifying that federal law and Texas law apply to the contract;
(AA) Complaints and inquiries notice;
(BB) A provision describing the collateral;
(CC) A notice regarding the preservation of claims and defenses; and
(DD) Signature blocks.

(5) For a deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(A) A definitions section;
(B) A provision regarding the transfer of rights in the property;
(C) A provision regarding late charges and prepayment of principal and interest;
(D) A provision regarding the funds for escrow items;
(E) A provision regarding charges and liens;
(F) A provision regarding property insurance;
(G) A provision regarding preservation, maintenance, protection, and inspection of the property;
(H) A provision regarding protection of the lender's interest in the property and rights under the deed of trust;
(I) A provision regarding the assignment of miscellaneous proceeds and forfeiture;
(J) A provision expressing no waiver of the lender's rights;
(K) A provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the property and binds his successors and assigns;
(L) A usury savings clause;
(M) A provision regarding the mailing of notices to the borrower;
(N) A provision specifying that federal law and Texas law apply to the contract;
(O) A provision regarding rules of clause construction;
(P) A provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made;
(Q) A provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration;
(R) Lender, contractor, and borrower's promise and agreement;
(S) A provision regarding acceleration and remedies;
(T) A provision regarding the power of sale;
(U) A provision regarding the borrower's right to reinstate after acceleration;
(V) A provision regarding the assignment of rents, appointment of receiver, and lender in possession;
(W) A provision regarding release of the lien;
(X) A provision regarding trustees and trustee liability;

(Y) A provision regarding the assignment of the contractor's lien and commencement of the work;

(Z) A provision regarding subrogation;

(AA) A provision regarding what happens if the sum secured and other charges violate applicable law;

(BB) A provision regarding the renewal and extension of the note secured by the deed of trust;

(CC) A provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply;

(DD) A provision regarding hazardous substances;

(EE) A provision regarding the lender's rights and the borrower's responsibilities;

(FF) A provision regarding default;

(GG) A provision regarding the lender and the borrower's request for notice of default and foreclosure under superior mortgages or deeds of trust;

(HH) Signature blocks; and

(II) A provision regarding notice of confidentiality rights.

§90.603. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances:

(1) Identification. The model identification clause reads:
Figure: 7 TAC §90.603(b)(1)

(2) Definitions. The model definitions section reads:

(A) "'Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale."

(3) Construction of improvements. The model clause regarding construction of improvements reads: "You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner."

(4) Contract price. The model clause establishing the contract price reads: "I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed."

(5) Transfer of lien. The model clause regarding the transfer of lien reads: "You transfer to Lender all of your rights and interests in this Contract."

(6) Completion by contractor, but not lender. The model clause specifying that the Lender is not responsible for completing the construction reads: "You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work."

(7) Partial lien. The model clause regarding a partial lien reads: "If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price."

(8) Charges and extras. The model clause regarding charges and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(9) Receipts and releases. The model clause regarding receipts and releases reads: "If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier."

(10) No work commenced. The model clause specifying that no work has commenced prior to execution of the contract reads: "This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work."

(11) Trustee's duties. The model clause regarding the trustee's duties reads:
Figure: 7 TAC §90.603(b)(11)

(12) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(13) Owner and contractor responsible. Section 41.007 of the Texas Property Code specifies that a home improvement contract must contain a notice specifying that the owner and the contractor are responsible for meeting the terms of the contract. This notice must appear either in this contract or in the residential construction contract. The Property Code requires that the notice must be conspicu-

ously printed, stamped, or typed in a font size equal to at least 10-point boldfaced type or computer equivalent and appear next to the owner's signature line on the contract. The wording of the notice is specified by the Property Code, which uses the pronouns "you" and "your" to refer to the owner. Licensees are encouraged to explain in the contract, prior to the notice, that "you" and "your" refer to the owner in this notice. The parties' signatures must be notarized. Licensee may use a different notary acknowledgment without having to submit the contract to the agency as a non-standard contract. The notice specifying that the owner and the contractor are responsible for meeting the terms of the contract, the model explanatory clause regarding the use of "you" and "your" in the notice, and the signature blanks are found in:
Figure: 7 TAC §90.603(b)(13)

(14) Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:
Figure: 7 TAC §90.603(b)(14)

(15) Notice of confidentiality rights clause. On or after January 1, 2004, the security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under §11.008(b) of the Texas Property Code. The model notice of confidentiality rights clause reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

(c) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that does not allow for withdrawals or multiple advances:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. The model clause identifying the pronouns used for the borrower and the lender reads:

Figure: 7 TAC §90.603(c)(1)

(2) The model Truth in Lending Act (TILA) disclosure box reads:

Figure: 7 TAC §90.603(c)(2)

(3) Itemization of Amount Financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Security for payment. The model clause relating to the security for payment reads: "Liens created in the Contract secure this Note."

(5) Definitions. The model definitions section reads:

(A) "'Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____."

(6) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(7) Late charge. The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(8) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(9) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(10) Finance charge and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(c)(10)(A)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(c)(10)(B)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(c)(10)(C)

(11) Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(12) Dishonored check fee. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model dishonored check fee provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(13) Default. The model provision specifying the conditions causing default reads: Figure: 7 TAC §90.603(c)(13)

(14) Property insurance. The model provision regarding property insurance reads: Figure: 7 TAC §90.603(c)(14)

(15) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads: Figure: 7 TAC §90.603(c)(15)

(16) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(17) Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(18) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your

prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement."

(19) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(20) Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees."

(21) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(22) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than applicable law allows."

(23) Savings clause. The model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with the law will be modified to comply with the law. The rest of the loan agreement remains valid."

(24) Prior agreements. For loan agreements exceeding \$50,000.00, this notice must be boldfaced, capitalized, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements and there are none. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements."

(25) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this loan agreement."

(26) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (512) 936-7600 - (800) 538-1579."

(27) Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(28) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following

notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(29) Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:
Figure: 7 TAC §90.603(c)(29)

(d) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that allows for withdrawals or multiple advances:

(1) Identification. The model identification clause listing the date and the account or contract number reads:
Figure: 7 TAC §90.603(d)(1)

(2) Definitions. The model definitions section reads:

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property."

(3) Construction of improvements. The model clause regarding construction of improvements reads: "You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner."

(4) Contract price. The model clause establishing the contract price reads: "I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed."

(5) Note payable to lender. The model clause specifying that the note is payable to the lender reads: "In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____ dollars (U.S. \$ _____)."

(6) Lien to secure note. The model clause regarding security for the note reads: "To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract."

(7) Transfer of lien. The model clause regarding the transfer of lien reads: "You transfer to Lender all of your rights and interests in this Contract."

(8) Exceptions to conveyance and warranty. Any exceptions to conveyance and warranty should be specified in the contract. The model clause regarding the exceptions to conveyance and warranty reads: "The exceptions to conveyance and warranty are: (List any exceptions to conveyance and warranty.)"

(9) Completion by contractor, but not lender. The model clause specifying that the lender is not responsible for completing the construction reads: "You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work."

(10) Partial lien. The model clause regarding a partial lien reads: "If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price."

(11) Charges and extras. The model clause regarding charges and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(12) Receipts and releases. The model clause regarding receipts and releases reads: "If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier."

(13) No work commenced. The model clause specifying that no work has commenced prior to execution of the contract reads: "This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work."

(14) Owner's promises and rights. The model clause regarding the owner's promises and rights reads:
Figure: 7 TAC §90.603(d)(14)

(15) Owner's duties. The model clause regarding the owner's duties reads:
Figure: 7 TAC §90.603(d)(15)

(16) Contractor's duties. The model clause regarding the contractor's duties reads:
Figure: 7 TAC §90.603(d)(16)

(17) Contractor's rights. The model clause regarding the contractor's rights reads:
Figure: 7 TAC §90.603(d)(17)

(18) Trustee's duties. The model clause regarding the trustee's duties reads:
Figure: 7 TAC §90.603(d)(18)

(19) General provisions. The model clause regarding general contract provisions reads:
Figure: 7 TAC §90.603(d)(19)

(20) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(21) Owner and contractor responsible. Section 41.007 of the Texas Property Code specifies that a home improvement contract must contain a notice specifying that the owner and the contractor are responsible for meeting the terms of the contract. The notice must appear in either this contract or the residential construction contract. The Property Code requires that the notice must be conspicuously printed, stamped, or typed in a font size equal to at least 10-point boldfaced type or computer equivalent and appear next to the owner's signature line on the contract. The wording of the notice is specified by the Property Code, which uses the pronouns "you" and "your" to refer to the owner. Licensees are encouraged to explain in the contract, prior to the notice, that "you" and "your" refer to the owner in this notice. The parties' signatures must be notarized. Licensee may use a different notary acknowledgment without having to submit the contract to the agency as a non-standard contract. The notice specifying that the owner and the contractor are responsible for meeting the terms of the contract, the model explanatory clause regarding the use of "you" and "your" in the notice, and the signature blanks are found in:
Figure: 7 TAC §90.603(d)(21)

(22) Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:

Figure: 7 TAC §90.603(d)(22)

(e) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that allows for withdrawals or multiple advances:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. The model clause identifying the pronouns used for the borrower and lender reads:

Figure: 7 TAC §90.603(e)(1)

(2) The model Truth in Lending Act (TILA) disclosure box reads:

Figure: 7 TAC §90.603(e)(2)

(3) Itemization of Amount Financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Security for payment. The model clause relating to the security for payment reads: "The Deed of Trust and the Lien created in the Contract secure this Note."

(5) Definitions. The model definitions section reads:

(A) "'Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property."

(6) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is \$_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is \$_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(7) Late charge. The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(8) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(9) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree

otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(10) Finance charge and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(e)(10)(A)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(e)(10)(B)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads: Figure: 7 TAC §90.603(e)(10)(C)

(11) Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(12) Dishonored check fee. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model dishonored check fee provision reads: "I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(13) Default. The model provision specifying the conditions causing default reads: Figure: 7 TAC §90.603(e)(13)

(14) Property insurance. The model provision regarding property insurance reads: Figure: 7 TAC §90.603(e)(14)

(15) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads: Figure: 7 TAC §90.603(e)(15)

(16) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(17) Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(18) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale

clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(19) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(20) Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(21) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(22) Usury savings. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(23) Savings clause. The model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(24) Prior agreements. For loan agreements exceeding \$50,000.00, this notice must be boldfaced, capitalized, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements and there are none. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(25) Note secured by deed of trust. The model clause stating that the note is secured by a deed of trust reads: "In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note."

(26) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(27) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (512) 936-7600 - (800) 538-1579."

(28) Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(29) Preservation of claims and defenses. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(30) Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads: Figure: 7 TAC §90.603(e)(30)

(f) For a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(1) Definitions. The model definitions section reads:

(A) "'Borrower' is _____. Borrower's address is _____."

(B) "'Contractor' is _____. Contractor's address is _____."

(C) "'Lender' is _____. Lender's address is _____."

(D) "'Trustee' is _____. Trustee's address is _____."

(E) "'I' or 'me' means _____, the grantor under this Deed of Trust and the person who signed the Note ('Borrower')."

(F) "'Loan Agreement' means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me."

(G) "'Deed of Trust' means this document, which is dated _____, together with all riders to this document."

(H) "'Note' means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. \$ _____) plus interest."

(I) "'Property' means the property at (list address of the Property), whose legal description is (list legal description of the Property)."

(J) "'Applicable Law' means all controlling applicable federal, state, and local law."

(K) "'Community Association Dues, Fees, and Assessments' means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization."

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section _____ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property. "

(2) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §90.603(f)(2)

(3) Payment of late charges and prepayment. The model provision regarding the payment of late charges and prepayment of principal and interest reads:
Figure: 7 TAC §90.603(f)(3)

(4) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.603(f)(4)

(5) Charges and liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §90.603(f)(5)

(6) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.603(f)(6)

(7) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs."

(8) Protection of lender's interest in the property and rights under the deed of trust. The model provision regarding protection of the lender's interest in the property and rights under the deed of trust reads:
Figure: 7 TAC §90.603(f)(8)

(9) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §90.603(f)(9)

(10) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later."

(11) Joint and several liability, deed of trust execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the property and binds his successors and assigns reads:
Figure: 7 TAC §90.603(f)(11)

(12) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(13) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it."

(14) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(15) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.603(f)(15)

(16) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the Loan Agreement is made, Lender will give me copies of all documents I sign."

(17) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits. If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than twenty-one days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement."

(18) Lender, contractor, and borrower's promises and agreements. The model provision regarding the lender, contractor, and borrower's promises and agreements reads: "LENDER, CONTRACTOR, AND I PROMISE AND AGREE:".

(19) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.603(f)(19)

(20) Power of sale. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.603(f)(20)

(21) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.603(f)(21)

(22) Assignment of rents, Appointment of receiver, lender in possession. The model provision regarding the assignment of rents, appointment of receiver, and lender in possession reads: "As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received."

(23) Release. The model provision regarding the release of the lien securing the loan agreement reads: "Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien."

(24) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.603(f)(24)

(25) Assignment of contractor's lien, commencement of work. The model provision regarding the assignment of the contractor's lien and specifying that no work was commenced before the contract was executed reads: "Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of

Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed."

(26) Subrogation. The model provision regarding subrogation reads: "If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment."

(27) Partial invalidity. The model provision regarding what happens if the sums secured and other charges violate applicable law reads: "If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt."

(28) Renewal and extension. The model provision regarding the renewal and extension of the note secured by the deed of trust reads: "The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note."

(29) Sale of loan, change of loan servicer, notice of grievance, lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads: "A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section. No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law. Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law. Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will

override any conflicting provision of the Loan Agreement. Lender's right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

(30) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.603(f)(30)

(31) Lender's rights and Borrower's responsibilities. The model provisions regarding the lender's rights and the borrower's responsibilities reads:
Figure: 7 TAC §90.603(f)(31)

(32) Default. The model provision regarding borrower's default reads: "Any default of my agreements with Lender will be a default of this Deed of Trust."

(33) Request for notice of default and foreclosure under superior mortgages or deeds of trust. The model provision regarding the lender and borrower's request for notice of default and foreclosure under superior mortgages or deeds of trust reads:
Figure: 7 TAC §90.603(f)(33)

(34) Signature blocks. The parties' signatures must be notarized. Licensee may use a different notary acknowledgment without having to submit the deed of trust to the agency as non-standard. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.603(f)(34)

(35) Notice of confidentiality rights clause. on or after January 1, 2004, the security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Section 11.008(b) of the Texas Property Code. The model notice of confidentiality rights clause reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) Regulation Z of the Truth in Lending Act provides a right of rescission form that must be provided to consumers in a transaction involving the consumer's principal dwelling. The TILA right of rescission form for use in a transaction involving the consumer's principal dwelling reads:
Figure: 7 TAC §90.604(a)(1)

(2) If the Texas constitutional homestead requirements apply to the transaction, the licensee must add a clause regarding notice of cancellation, place of signing the contract, and the five-day waiting period. The model clause regarding the notice of cancellation, place of signing the contract, and the five-day waiting period reads:
Figure: 7 TAC §90.604(a)(2)

(3) Article 16, Section 50(a)(5) of the Texas Constitution provides that a contract for improvements on a homestead must expressly provide the owner with notice of the owner's right to cancel the contract. The model notice regarding owner's right to cancel the contract reads: "NOTICE OF RIGHT TO CANCEL. THE OWNER MAY CANCEL THE CONTRACT WITHOUT PENALTY OR CHARGE WITHIN THREE DAYS AFTER THE EXECUTION OF THE CONTRACT BY ALL PARTIES, UNLESS THE WORK AND MATERIAL ARE NECESSARY TO COMPLETE IMMEDIATE REPAIRS TO CONDITIONS ON THE HOMESTEAD PROPERTY THAT MATERIALLY AFFECT THE HEALTH OR SAFETY OF THE OWNER OR PERSON RESIDING IN THE HOMESTEAD AND THE OWNER OF THE HOMESTEAD ACKNOWLEDGES SUCH IN WRITING."

(4) Chapter 39 of the Texas Business and Commerce Code requires that notice must be given to the consumer regarding the consumer's right to cancel certain types of transactions. If this chapter is applicable, the notice that must be given to licensee must appear in immediate proximity to the consumer's signature, or on the front page of the receipt if a contract is not used. The notice must be in boldfaced type and must be the equivalent of at least 10 points in the Times typeface. The statement of which the notice must be substantially similar to reads: "YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(5) Chapter 39 of the Texas Business and Commerce Code also requires, if applicable, that a completed notice of cancellation form in duplicate be attached to the loan documents or receipt of the consumer transaction. This notice must be easily detachable from the contract or receipt, be in the same language as the contract or receipt, be in boldfaced type, and be the equivalent of at least 10 points in the Times typeface. The required notice of cancellation reads:
Figure: 7 TAC §90.604(a)(5)

(6) The addition of information related to information set forth in the model clauses that is not otherwise prohibited by law.

(7) Substituting another term for "Lender" or "Borrower" that has the same meaning, or use of pronouns such as "you," "we," and "us."

(8) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(9) Inserting descriptive headings or number provisions.

(10) Changing the case of a word if otherwise permitted by the Texas Finance Code.

(11) Other changes that do not affect the substance of the disclosures.

(12) A sample model contract that does not allow for withdrawals or multiple advances reads:
Figure: 7 TAC §90.604(a)(12)

(13) A sample model promissory note that does not allow for withdrawals or multiple advances reads:
Figure: 7 TAC §90.604(a)(13)

(14) A sample model contract that allows for withdrawals or multiple advances reads:
Figure: 7 TAC §90.604(a)(14)

(15) A sample model promissory note that allows for withdrawals or multiple advances reads:

Figure: 7 TAC §90.604(a)(15)

(16) A sample model deed of trust that allows for withdrawals or multiple advances reads:

Figure: 7 TAC §90.604(a)(16)

(b) A licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602395

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



SUBCHAPTER G. SPANISH DISCLOSURES

7 TAC §§90.701 - 90.706

The Finance Commission of Texas proposes new 7 TAC, Chapter 90, Subchapter G, §§90.701 - 90.706, concerning plain language contract provisions for Texas Finance Code, Chapter 342 transactions. The new rules contained in 7 TAC §§90.701 - 90.706 outline provisions concerning required documents when loans under Chapter 342 or home equity loans regulated by the Office of Consumer Credit Commissioner have certain terms negotiated in Spanish.

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules pending repeal, as found in 7 TAC, Subchapter Q, §§1.1251 - 1.1256. The commission's proposed repeal of Subchapter Q is published elsewhere in this issue of the *Texas Register*.

The purpose of §§90.701 - 90.706 is to implement the amendments contained in subsection (a-1) to Texas Finance Code §341.502, as enacted by the 79th Texas Legislature in House Bill 1547. Section 341.502 requires contracts for consumer loans under Chapter 342 to be written in plain language. The amendments to the statute require that certain disclosures be provided in Spanish when the terms of an agreement for the specified loans are negotiated in Spanish. The rules propose model disclosure language that is designed to comply with the plain language requirements of §341.502. A creditor may receive certain legal benefits by using the prescribed model language; however, a creditor may choose to use its own Spanish disclosure. A creditor is not required to submit a Spanish disclosure for plain language review as contemplated in §341.502(c).

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the proposed new rules as a result of the agency's rule review of current Subchapter Q, under

Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature. Please note that minor revisions in wording have been made to some rules and figures from their previously enacted version, but often such changes do not substantively affect the meaning of the rules, model clauses, or contracts and thus, further explanation is unnecessary.

Section 90.701 (current §1.1251) clarifies the types of transactions that are covered by the provisions of the proposed rules. These rules only apply to closed-end transactions as the provisions of §341.502(a-1) require that the Spanish disclosure which must be delivered be identical to disclosures for a closed-end transaction under 12 C.F.R. §226.18. Section 341.502(a-1) also requires that the disclosure be given "if the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish." (emphasis added) Since the statutory language expressly limits the requirement to loans, retail installment transactions under Chapter 348, which are not loans, are not covered by §341.502(a-1) and the proposed rules. A creditor under Chapter 348 may choose to optionally comply with the proposed rules. Section 341.001(9) and §301.002(10), Texas Finance Code define a "loan" as an advance of cash as contrasted to Texas Finance Code §348.007 which defines a retail installment transaction as a credit sale of a motor vehicle.

Section 90.702 (current §1.1252) details which contract terms, that when a creditor provides information about credit items in Spanish in relation to a credit transaction with a debtor, will constitute negotiation in Spanish, and hence require written disclosure in Spanish.

Section 90.703 (current §1.1253) outlines disclosure options, including figures containing model forms that may be utilized.

The model forms contained in §90.703 have been revised to correct minor errors in the Spanish translation.

Section 90.704 (current §1.1254) provides a list of items that do not require translation, such as names, addresses, brand names, and others.

Section 90.705 (current §1.1255) discusses transactions with multiple creditors and/or multiple debtors and the methods for providing disclosure.

Section 90.706 (current §1.1256) states that the English language contract is the legal document.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be more complete disclosure to Spanish-speaking debtors, enhanced compliance with the credit laws, and increased uniformity and consistency in credit contracts. The general substance of these rules has already been in effect, as the rules are simply being relocated with some technical corrections. Thus, there is no anticipated cost to persons who are required to comply with the new rules as proposed. There is no anticipated adverse economic effect on small or micro busi-

nesses. There will be no effect on individuals required to comply with the sections as proposed.

The rules contained in §§90.701 - 90.706 pertain only to those creditors who choose to negotiate certain key terms of credit transactions in Spanish with consumers. Because a licensee complies with the proposal by providing a Spanish translation of the contract form, by using the model forms contained in §90.703, or by providing its own forms containing the necessary disclosures, the potential additional costs imposed by the proposal are limited. In some cases creditors already comply with these provisions and no additional costs would be required. For those who decide to modify their forms based on the revisions to the model forms, the potential anticipated costs would include the costs associated with copying a contract or new forms, and costs attributable to the loss of obsolete forms in inventory. Potential additional copy costs are estimated to be approximately \$0.30 - \$0.40 per contract or new form. There will be no adverse effect on small businesses as compared to the effect on large businesses.

Some licensees who use or lease specialized computer software programs for their loan business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the adopted forms or provide Spanish translations of the full contracts is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed sections are published in the *Texas Register*. At the conclusion of the 31st day after the proposed sections are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §342.502 grants the Finance Commission the authority to adopt rules to govern the form of Chapter 342 contracts and to adopt model plain language contracts.

These rules affect Texas Finance Code, Chapter 342, Subchapters E, F, and G.

§90.701. Applicability.

(a) If a contract for loan under Chapter 342, Subchapters E, F, or G is negotiated in Spanish, then a licensee must deliver a disclosure to the debtor in Spanish no later than consummation of the contract.

(b) If a retail installment transaction under Chapter 348 is negotiated in Spanish, then a creditor may but is not required to deliver a disclosure specified in §90.703 of this title to the debtor in Spanish.

(c) The disclosure requirement does not apply to open-end transactions.

§90.702. Negotiation in Spanish.

(a) The disclosure specified in §90.703 of this title must be given if a creditor provides information in relation to a credit transaction with a debtor or the debtor's representative regarding any of the following credit terms in Spanish:

- (1) amount financed;
- (2) finance charge;
- (3) annual percentage rate;
- (4) the amount of any payment or schedule of payments;
- (5) total of payments; or
- (6) security interest.

(b) Advertising exception. A creditor is not required to provide a disclosure specified in §90.703 of this title if a creditor advertises credit terms in Spanish that are specified in this section.

§90.703. Form of Disclosure.

(a) The creditor may at its option provide a debtor one of the following:

(1) a Spanish translation of the contract form that includes a Spanish translation of the disclosure form under 12 C.F.R. §226.18;

(2) for transactions subject to Chapter 342, Subchapter E, a copy of the "Notificación de Crédito Al Consumidor (Préstamo a Plazos)" as prescribed in Figure: 7 TAC §90.703(a)(2);
Figure: 7 TAC §90.703(a)(2)

(3) for transactions subject to Chapter 342, Subchapter F:

(A) a copy of the "Notificación de Crédito Al Consumidor (Préstamo)," as prescribed in Figure: 7 TAC §90.703(a)(3)(A), selecting the appropriate late charge payment option; and
Figure: 7 TAC §90.703(a)(3)(A)

(i) Late Charge Option 1: "Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(ii) Late Charge Option 1 Spanish Translation: "Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago."

(iii) Late Charge Option 2: "Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment."

(iv) Late Charge Option 2 Spanish Translation: "Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor."

(B) a copy of the "Conceptos Financieros," as prescribed in Figure: 7 TAC §90.703(a)(3)(B);
Figure: 7 TAC §90.703(a)(3)(B)

(4) for transactions subject to Chapter 342, Subchapter G, a copy of the "Notificación de Crédito Al Consumidor (Préstamo de Segunda Hipoteca)" as prescribed in Figure: 7 TAC §90.703(a)(4); or
Figure: 7 TAC §90.703(a)(4)

(5) for transactions subject to Chapter 348, a copy of the "Notificación de Crédito Al Consumidor (Contrato de Menudeo a Plazos para Vehículo Automotor)" as prescribed in Figure: 7 TAC §90.703(a)(5), selecting the appropriate late charge payment option.

Figure: 7 TAC §90.703(a)(5)

(b) Creditors may delete inapplicable provisions of the disclosure. Creditors may also delete any of the English portions of Figure: 7 TAC §90.703(a)(4) or the lower portion of the disclosure below the payment schedule box of Figure: 7 TAC §90.703(a)(3)(A).

§90.704. Items Excluded From Translation Requirement.

The summary or translation required under Texas Finance Code, §341.502(a-1) may retain the following elements in English without translation to Spanish:

(1) names and titles of individuals, companies and other persons;

(2) addresses;

(3) brand names, trade names, trademarks, registered service marks, or full or abbreviated designations of the make and model of goods or services;

(4) alphanumeric codes, numerals, dollar amounts expressed in numerals, or dates; or

(5) words or expressions not having a generally-accepted Spanish translation.

§90.705. Multiple-Party Transactions.

If there are multiple creditors in the transaction, only one creditor needs to provide the information required by §90.703 of this title. If there are multiple debtors in a transaction, the creditor may deliver the information required by this section to any one or more of the debtors. The information may, but need not be, signed by the borrower or creditor.

§90.706. Legal Document.

(a) The agreement entered in the English language is the legal document and determines the rights and obligations of the parties. The disclosures required by federal law entered in the English language are the legal disclosures and determine the disclosure obligations of the creditor.

(b) The creditor may at its option add the following disclaimer:

(1) "NOTICE REGARDING THE TRANSLATION INTO SPANISH: The English document is the legal document and reflects the parties' rights and obligations. The translation into Spanish of the document is provided for the convenience of the Borrower."

(2) Spanish Translation: "AVISO CON RESPECTO A LA TRADUCCIÓN AL ESPAÑOL: El documento en inglés es el documento legal y refleja los derechos y obligaciones de las partes. La traducción al español del documento se ofrece para la conveniencia del Prestatario."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602396

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7640



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 5. COMPETITION IN NON-ERCOT AREAS

16 TAC §25.422

The Public Utility Commission of Texas (commission) proposes new §25.422, relating to Transition to Competition for Certain Areas Within the Southwest Power Pool. The proposed new rule addresses the readiness of the Southwestern Electric Power Company service area in Texas (SWEPCO) and the Southwest Power Pool portion of the AEP Texas North Company service area in Texas (Texas North-SPP) to offer retail competition. Customer choice has been delayed in these areas by either legislative mandate or order of the commission and is currently delayed until January 1, 2007, at the earliest, by order in Docket Number 24869, *Southwest Power Pool Market Readiness Implementation Docket*. If this rule is adopted as proposed, the commission would determine, pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998, Supplement 2005) §39.103 (PURA), that the power region in which SWEPCO and Texas North-SPP are located is unable to offer fair competition and reliable service to all retail customer classes in Texas; therefore, customer choice would be further delayed until at least January 1, 2011, and until the stages of development set forth in this rule are completed. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 32104 is assigned to this proceeding.

The commission's proposal to determine that the power region in which SWEPCO and Texas North-SPP are located is unable to offer fair competition and reliable service to all retail customer classes in Texas is based on its experience in introducing retail competition in the Electric Reliability Council of Texas (ERCOT) region, and its attempt to introduce retail competition in other areas of Texas outside of ERCOT, including previous efforts involving the SWEPCO service area. The commission's successful efforts to establish retail competition in ERCOT began after the passage of Senate Bill 7 in 1999. In order to transition to retail competition in accordance with the statutory timeline of PURA, the commission and market participants engaged in various proceedings to restructure the existing electric utilities, develop protocols for the market, and establish ERCOT as an independent regional transmission operator. These steps were completed before the commission opened a pilot project in ERCOT and determined that the market was ready for retail competition.

Outside of the ERCOT service area, the commission has authorized pilot programs for retail competition in the non-ERCOT service areas of Entergy Gulf States, Inc. (Entergy), Southwestern Public Service Company (SPS), and SWEPCO. In two of these areas, no retail electric providers (REPs) offered service during the pilot projects, and no customers switched their service from the utility to a REP. At one point, a single REP served a small number of commercial customers under the Entergy pilot project, but subsequently discontinued service to these customers. As

a result of the outcome of these pilot projects, the commission delayed the beginning of retail competition in the Entergy and SWEPCO areas. Subsequently, the legislature enacted a law to delay competition in the SPS area and required Entergy to submit a new transition to competition plan by January 2007.

SWEPCO and Texas North-SPP have taken steps towards a possible transition to competition, including the initiation of pilot programs and the establishment of rates for the pilot programs; the filing of a business separation plan, unbundled cost of service rates, and price-to- beat rates; and the separation of competitive energy services. However, many of the steps that led to the successful introduction of competition in the ERCOT area have not taken place in the SWEPCO and Texas North SPP areas, including the development of a centralized wholesale market in the power region, development of retail market protocols and the certification of a qualified power region. Due to the lack of participation in the existing pilot programs in the areas and the need for further development of the wholesale and retail market structure that the commission deems necessary for a successful transition to competition, the commission proposes that retail competition in these areas be further delayed. Additionally, the commission proposes that the necessary steps to achieve retail competition be set out in a rule to establish an orderly transition to full customer choice in those areas.

The new section, if adopted, will establish an orderly transition to full customer choice in those areas, recognizing the preliminary steps to competition that have already been taken in the SWEPCO and Texas North-SPP areas. The sequence set forth in this rule would be based upon completing the listed items in each stage before the next stage is initiated. This sequence of events is similar to that approved in P.U.C. Substantive Rule §25.421, of this title (relating to Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region) which delays competition in the portions of Texas served by El Paso Electric Company (EPE). However, unlike EPE, in the case of SWEPCO some preliminary steps towards competition have been taken, and therefore the proposed rule recognizes that certain positive steps have already been taken. The current pilot projects for SWEPCO and Texas North-SPP would continue throughout these stages, but must progress to a point that the commission can evaluate the results of the pilot projects pursuant to §25.431 of this title (relating to Retail Competition Pilot Projects). Under the proposed rule, before opening the area to full retail competition, the commission must determine whether the pilot projects have progressed to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the SWEPCO and Texas North-SPP service areas. After the completion of the other required stages and successful operation of a robust pilot project, the commission would determine whether full retail competition should commence in these areas.

Lauren Damen, Senior Retail Market Analyst, Electric Industry Oversight Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Damen has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be increased certainty with respect to utility rates and service and the transition to competition in the SWEPCO and Texas North-SPP service areas. There will be no adverse economic effect on small busi-

nesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The introduction of retail competition requires a regulated utility to undertake a number of organizational changes and regulatory activities that may have an economic cost. The proposed rule would sequence these activities in a way that is logical and that should help avoid unnecessary costs. The proposed rule would not impose additional costs on the regulated utility.

Ms. Damen has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, June 27, 2006, at 10:00 a.m. The request for a public hearing must be received within 30 days after publication of the proposed rule.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 31 days after publication. Sixteen copies of comments to the proposed new section are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32104.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §39.051, which requires an electric utility to separate its business functions prior to the introduction of retail competition; PURA §39.102, which requires the implementation of retail customer choice after January 1, 2002 and allows the affiliated retail electric provider to provide service until the customer chooses service from another provider; PURA §39.103, which grants the commission the authority to delay competition if a power region cannot offer fair competition and reliable service to all customer classes; PURA §39.104, which addresses the retail competition pilot projects; PURA §39.151, which requires that a power region establish one or more independent organizations, and sets forth requirements for commission authority over an independent organization; PURA §39.152, which grants the commission authority to certify a power region; PURA §39.153 which sets forth requirements for capacity auctions; PURA §39.154, which grants the commission authority to evaluate market power; PURA §39.156, which requires the mitigation of market power due to ownership of capacity; PURA §39.201, which addresses unbundled cost-of-service rates; PURA §39.202, which establishes the price-to-beat obligation for affiliated retail electric providers; and PURA §39.904 and §39.905, which address the state goals for renewable energy development and energy efficiency.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.051, 39.102, 39.103, 39.104, 39.151, 39.152, 39.153, 39.154, 39.156, 39.201, 39.202, 39.904, and 39.905.

§25.422. Transition to Competition for Certain Areas Within the Southwest Power Pool.

(a) Purpose. The purpose of this section is to address the process and the sequence of events for the introduction of retail competition in the Southwestern Electric Power Company service area in Texas (SWEPCO) and in the Southwest Power Pool portion of the AEP Texas North Company service area in Texas (Texas North-SPP).

(b) Application. This section shall apply to SWEPCO and Texas North-SPP (collectively referred to as "the utilities").

(c) Readiness for retail competition. The commission determines that the power region in which SWEPCO and Texas North-SPP are located will be unable to offer fair competition and reliable service to all retail customer classes in Texas until January 1, 2011, at the earliest. Therefore, pursuant to Public Utility Regulatory Act (PURA) §39.103, the introduction of full retail competition for these portions of the power region in Texas shall be further delayed until this region can offer fair competition and reliable service to all retail customer classes, subject to the terms and conditions established in this section.

(d) Cost-of-service regulation. Until the date authorized by the commission for the implementation of full retail competition in SWEPCO and Texas North-SPP pursuant to this section, the rates of the utilities are subject to regulation under PURA Chapter 36. Until full retail competition begins, the utilities shall file Annual Earnings Reports as required by §25.73 of this title (relating to Financial and Operations Reports) in lieu of the Annual Report required by PURA §39.257.

(e) Transition to competition. Full retail competition shall not be introduced in the utilities' service areas before January 1, 2011. In addition, the introduction of retail competition in the utilities' service areas shall be conditioned on successful fulfillment of the sequence of events and activities set forth in paragraphs (1) through (5) of this subsection. All the listed items in each stage must be completed before the next stage is initiated. Unless stated otherwise in the rule, each of the activities will be conducted by the commission in conjunction with SWEPCO and Texas North-SPP and other interested parties. Full retail competition will not begin in SWEPCO and Texas North-SPP until completion of the fourth stage.

(1) The stages outlined below assume that the following activities have been completed, by SWEPCO and Texas North-SPP:

(A) The initiation of a pilot program, including the establishment of rates for the pilot program.

(B) The filing of a business separation plan, unbundled cost of service, and price-to-beat rates.

(C) The separation of competitive energy services.

(D) Approval by the Federal Energy Regulatory Commission (FERC) of a regional transmission organization for the power region containing the utilities' service areas and the commencement of independent operation of the transmission network, that ensures non-discriminatory access, under the approved regional transmission organization.

(2) The first stage consists of the following activities:

(A) The utilities will continue the operation of the pilot projects to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot program offered in the utilities' service areas;

(B) The utilities will file a plan for the development of retail market protocols to facilitate retail competition;

(C) The utilities will file a plan for the development of a balancing energy market, market for ancillary services, and market-based congestion management system for the wholesale market in the region in which the regional transmission organization operates; and

(D) A seams agreement will be implemented with adjacent power regions to reduce barriers to entry and facilitate competition.

(3) The second stage consists of the following activities:

(A) The utilities shall file a transition to competition plan identifying how they intend to achieve full customer choice, including:

(i) certification of a qualified power region under PURA §39.152;

(ii) auctioning rights to generating capacity;

(iii) the establishment of a price to beat for eligible residential and commercial customers;

(iv) the retail market protocols that will be applicable in the utilities' service areas;

(v) a plan, developed with the regional transmission organization, the statewide registration agent, and market participants, for testing retail and wholesale systems, including those systems necessary for switching customers to the retail electric provider of their choice and for settlement of wholesale market transactions;

(vi) any necessary amendments to the previously filed business separation plan;

(vii) an unbundled cost of service rate filing package; and

(viii) any necessary amendments the previously filed price-to-beat rates.

(B) The activities to be completed by the commission in the second stage are to:

(i) Approve, modify, or reject the transition to competition plan within 180 days after the date of filing unless a hearing is requested. If a hearing is requested, the 180-day deadline shall be extended one day for each day of hearing;

(ii) Approve a business separation plan or amendments to business separation plan;

(iii) Set unbundled transmission and distribution rates;

(iv) Certify a qualified power region, for an area that includes the utilities, pursuant to PURA §39.152; and

(v) Set price-to-beat rates for the utilities' service areas.

(4) The third stage consists of the following activities:

(A) The commission shall evaluate the results of the pilot projects pursuant to §25.431 of this title (relating to Retail Competition Pilot Projects), including whether the pilot project has progressed to a point that competitive retail electric providers are providing service to a reasonable number of customers for all major customer classes in the pilot programs offered in the utilities' service areas and whether the retail and wholesale systems have been tested and are performing adequately.

(B) The utilities shall initiate capacity auctions pursuant to PURA §39.153 and §25.381 of this title (relating to Capacity Auctions) at a time to be determined by the commission, and consistent with the transition to competition plan.

(5) The fourth stage consists of the following activities:

(A) The utilities shall file a request for approval to commence competition, consistent with the procedures and standards developed in the previous stages. This filing should be made at least 180 days before the anticipated date of the commencement of competition.

(B) The commission shall evaluate whether the power region can offer fair competition and reliable service to all retail customer classes, and whether there are any outstanding items in the competition plan that must be completed prior to the commencement of full competition. If the commission concludes that the power region can offer fair competition and reliable service to all retail customer classes, it shall issue an order initiating retail competition consistent with the approved transition to competition plan.

(f) Annual Report. If full retail competition has not been implemented by January 1, 2011, the utilities shall file a report with the commission by January 31, 2011 identifying the items required by this rule that have not yet been completed and an estimate of when completion of each item is anticipated. The utilities shall make a similar filing each year on January 31 until full retail competition in their service areas is authorized by the commission or the commission rules that no further reports are necessary.

(g) Pilot Project Continuation. Notwithstanding the provisions of subsection (e) of this section, the Pilot Projects in the utilities' service areas shall continue. However, so long as the utilities can effectively administer customer registrations and convey information relating to a customer's choice of retail electric provider and meter information to persons who need such information, they may continue to perform these functions, subject to the codes of conduct.

(h) Protection of Contractual Rights. The transition to competition plan in the utilities' service areas shall not adversely affect the rights or obligations of an electric cooperative under a wholesale generation or transmission agreement.

(i) Energy efficiency, and renewable energy requirements. SWEPCO and Texas North SPP shall:

(1) Be subject to requirements of PURA §39.905 and §25.181 of this title (relating to Energy Efficiency Goal) and shall continue to participate in the required energy efficiency programs.

(2) Be subject to the requirements of PURA §39.904 and §25.173 of this title (relating to Goal for Renewable Energy), and continue to participate in the renewable energy credits program.

(j) Applicability of other rules. This section governs the implementation of PURA Chapter 39 requirements as applied to SWEPCO and Texas North-SPP. If there is an inconsistency or conflict between this section and other rules in this Chapter (relating to Substantive Rules Applicable to Electric Service Providers), the provisions of this section shall control.

(k) Good cause. Upon a finding of good cause, as determined by the commission, the sequence for retail competition set forth in subsection (e) of this section may be modified by commission order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602404

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 936-7223



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES, PENALTIES AND FORMS

22 TAC §175.2

The Texas Medical Board proposes an amendment to new §175.2, concerning Registration and Renewal Fees.

Section 175.2 Increases the fee for physician registration of office based anesthesia by \$10 to account for the mandatory fee for on-line registration.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to allow the agency to recoup the expense of on-line registration. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§175.2. Registration and Renewal Fees.

The board shall charge the following fees to continue licenses and permits in effect:

(1) Physician Registration Permits:

(A) Initial biennial permit (includes surcharges of \$496)--\$756.

(B) Subsequent biennial permit (includes surcharges of \$492)--\$752.

(C) Additional biennial registration fee for office-based anesthesia--\$210 (includes surcharge of \$10) [\$200].

(D) Continuing medical education temporary license--\$55.

(2) Physician Assistant Registration Permits:

(A) Initial annual permit (includes surcharges of \$10)--\$229.

(B) Subsequent annual permit (includes surcharges of \$6)--\$225.

(3) Acupuncturists/Acudetox Specialists Registration Permits:

(A) Initial annual permit for acupuncturist (includes surcharges of \$10)--\$294.

(B) Subsequent annual permit for acupuncturist (includes surcharges of \$6)--\$290.

(C) Annual renewal for acudetox specialist certification--\$59.

(4) Non-Certified Radiologic Technician permit annual renewal (includes surcharge of \$2)--\$86.

(5) Non-Profit Health Organization biennial recertification--\$1,068.

(6) Surgical Assistants registration permits:

(A) Initial biennial permit (includes surcharges of \$6)--\$474.

(B) Subsequent biennial permit (includes surcharges of \$2)--\$470.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602422

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 305-7016



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER F. STANDARD PERMITS

30 TAC §116.603

The Texas Commission on Environmental Quality (agency or commission) proposes an amendment to §116.603.

The amended section is proposed to be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission is proposing to revise §116.603 by requiring newspaper notice of proposed standard permits with statewide

applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. Also, the executive director would use press releases and appropriate electronic means to inform state and local officials. Electronic means would include, but is not limited to, the use of e-mail addresses, Web sites, or electronic bulletin boards and publications. This change would increase notification with state and local officials and provide an opportunity for more statewide newspaper coverage through commission press releases.

Texas Health and Safety Code, §382.05195(b), requires the commission to publish notice of a standard permit in one or more statewide or regional newspapers designated by the executive director by rule that will, in the executive director's judgement, provide reasonable notice throughout the state. The regulation in §116.603 requires publication in 11 newspapers. Six standard permits have been issued under the requirements of §116.603 and over 80% of the comments originated from the Austin, Dallas, and Houston areas. The amendment would also save up to \$4,500 per standard permit notice at a time that an increase in the number of new standard permits may be expected. Publishing notice in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis, along with the required *Texas Register* publication and posting on the agency Web site will provide reasonable notice of proposed standard permits and would give the commission discretion to target the specific areas affected.

The amendment would make the standard permit public notice more consistent with the agency's existing non-individual permit requirements. This includes the Water Quality General Permits, which require publication in at least one newspaper of statewide or regional circulation. Also, air standard permit amendments and revocations, permits by rule, and Title V general operating permits with statewide applicability are required to be published in newspapers in Austin, Dallas, and Houston.

SECTION DISCUSSION

The commission proposes an amendment to §116.603(a). The amendment would require newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. This would allow the commission to focus its efforts in areas most affected by standard permits. The commission will continue to post each draft standard permit on its Web site and conduct stakeholder meetings, as appropriate. The executive director would issue a press release and will publish notice in the *Texas Register*. The executive director may also use appropriate electronic means to notify selected state and local officials in the affected area. The rule would no longer require newspaper notice for each standard permit proposal in Amarillo, Corpus Christi, El Paso, the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, or Tyler.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed amendment is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government.

The proposed rule would provide an opportunity for more statewide newspaper coverage through commission press

releases, posting of notice on the agency Web site, and increased notification of state and local officials through the use of electronic means. The rulemaking would reduce the number of newspapers the agency would be required to publish notices of proposed standard permits from 11 to three. The proposed rulemaking would require a public notice to be published in the Austin, Dallas, and Houston newspapers as well as any regional newspapers designated by the executive director on a case-by-case basis. Publication of notice in the *Texas Register* would continue under the proposed rule. These proposed changes are not anticipated to have significant fiscal implications for the agency. The rulemaking would result in a maximum cost savings to the agency of \$4,500 for each standard permit proposal if the public notice was published in only the Austin, Dallas, and Houston newspapers. The actual cost savings realized would be dependent upon the actual number of published public notices. The agency anticipates issuing between four and seven standard permits over the next two years. The estimated cost savings to the agency would be between \$18,000 and \$31,500.

The proposed rule would result in no fiscal implications for other units of state or local government. The rulemaking is specific to the notification requirements imposed upon the commission. The proposed rule would provide the opportunity of select state and local officials to be notified by electronic means of notices regarding standard permits.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a more efficient method of notifying the public as well as state and local officials regarding standard permits proposed to be issued by the agency.

No fiscal implications are anticipated for businesses and individuals as a result of the proposed rulemaking. The rulemaking would reduce the number of newspapers the agency would be required to publish notices of proposed standard permits from 11 to three. The proposed rulemaking would require a public notice to be published in the Austin, Dallas, and Houston newspapers as well as any regional newspapers designated by the executive director on a case-by-case basis. Publication of notice in the *Texas Register* would continue under the proposed rule.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small and micro-businesses would experience the same improved notification benefits as larger businesses but would realize no fiscal benefit as a result of the proposed amendment.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0025 because it does not meet the definition of a "major

environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent is not to protect the environment. This rule-making changes notice requirements and does not affect any environmental standards.

The proposed amendment to §116.603(a) modifies the existing rule in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers designated by the executive director by rule that will, in the executive director's judgement, provide reasonable notice throughout the state. This proposed amendment provides more efficient public notice of proposed standard permits. The proposed rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a draft regulatory impact analysis is not required because the proposed rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the proposed requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to amend §116.603(a) in accordance with Texas Health and Safety Code, §382.05195(b), which requires the commission to publish notice of a proposed standard permit in the *Texas Register* and in one or more statewide or regional newspapers designated by the executive director by rule that will, in the executive director's judgement, provide reasonable notice throughout the state. This amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, promulgation and enforcement of this proposed rule is neither a statutory nor a constitutional taking because it does not affect private real

property. Therefore, this rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this proposed rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The proposed revisions will not affect sites subject to the Federal Operating Permits Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 12, 2006, at 10:00 a.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons with special needs who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005- 038-116-PR. Comments must be received by 5:00 p.m., June 14, 2006. Copies of the proposed rule can be obtained from the commission's Web site

at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Phil Harwell, Air Permits Division, at (512) 239-1517.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendment is also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.05195, which authorizes the commission to issue a standard permit.

The proposed amendment implements Texas Health and Safety Code, §§382.017, 382.011, 382.012, and 382.05195.

§116.603. *Public Participation in Issuance of Standard Permits.*

(a) The commission will publish notice of a proposed standard permit in a daily or weekly newspaper of general circulation in the area affected by the activity that is the subject of the proposed standard permit. If the proposed standard permit will have statewide applicability, notice will be published in the daily newspaper of largest general circulation within each of the following metropolitan areas: [Amarillo,] Austin, [Corpus Christi,] Dallas, [El Paso,] and Houston and any other regional newspapers designated by the executive director on a case-by-case basis [; the Lower Rio Grande Valley, Lubbock, the Permian Basin, San Antonio, and Tyler]. In all [both] cases, the commission will publish notice in the *Texas Register* and issue a press release. Electronic means may be used to transmit notice to selected state and local officials.

(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 27, 2006.

TRD-200602352

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 239-6087

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 18. TEXAS GROUNDWATER PROTECTION COMMITTEE

CHAPTER 601. GROUNDWATER CONTAMINATION REPORT

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO PUBLIC FILES AND JOINT REPORT

31 TAC §§601.1 - 601.5

The Texas Groundwater Protection Committee (committee) proposes amendments to §§601.1 - 601.5, concerning General Provisions Relating to Public Files and Joint Report.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. The rules also describe the contents of the committee's Joint Groundwater Monitoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

The purpose of the proposed amendments is to make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual*, November 2004, for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

The committee also is proposing, in concurrent action, the review of Chapter 601 as required by Texas Government Code, §2001.039. The proposed notice of review can be found in the Review of Agency Rules section in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with Texas Register requirements and guidance provided in the *Texas Legislative Council Drafting Manual*.

The proposed amendment to §601.1, relating to Purposes of Rules, clarifies that the purposes of the rules apply to the whole Chapter 601 since the addition of Subchapter B, relating to Notice of Groundwater Contamination, in 2003. The two existing purposes and one new purpose are split out as separately numbered paragraphs. In new paragraph (1), the form of a legal citation is corrected, the use of the term "certain state agencies" is clarified by use of the term "Member agency" that will be defined in §601.3(8), the paragraph is ended by a semicolon, and the word "and" is deleted. In new paragraph (2), the archaic demonstrative adjective "such" is replaced with the more proper demonstrative pronoun "that," the paragraph is ended by a semicolon, and conjoined with new paragraph (3) by "and." Proposed new

paragraph (3) adds the purpose to specify the form and content of the notice of groundwater contamination required under TWC, §26.408, that was added in 2003 and implemented by adoption of §601.10, relating to Form and Content of Groundwater Contamination Notice, that same year.

The proposed amendment to §601.2, relating to Applicability, splits out the state agencies and organizations having membership on the committee as separately numbered paragraphs. New paragraph (1) deletes reference to the Texas Natural Resource Conservation Commission. New paragraph (2) corrects the name of the Department of State Health Services.

The proposed amendment to §601.3, relating to Definitions, removes ambiguity in the use of the definitions throughout the chapter. The proposed amendment to §601.3(1) corrects the legal citation of House Bill 1458 and extends the definition to include amendments to the TWC in 2003. The proposed amendment to §601.3(2) deletes reference to the Texas Natural Resource Conservation Commission. The proposed amendment to §601.3(4) clarifies that documentation of groundwater contamination is made by one of the committee's member agencies, as newly defined, and clarifies that the information pertinent to making a determination of groundwater contamination is maintained by the same agency making the determination. The proposed amendment to §601.3(5) clarifies that an enforcement action is made by one of the committee's member agencies and is restricted to action that accomplishes or requires the identification, documentation, monitoring, assessing, or remediation of groundwater contamination. The proposed amendment to §601.3(7) moves the exception for an aquifer exemption to the beginning of the second sentence rather than the middle of that sentence and corrects the two legal citations in that exception, conforms to the guidelines in the *Texas Legislative Council Drafting Manual* to draft rules in the present tense rather than the future tense, restricts the aquifer exemption to those conditions in subparagraphs (A) or (B), clarifies that the quantity specified in the condition in subparagraph (B) refers to dissolved solids, and restricts the hydrological connection in clause (ii) of subparagraph (B) to a surface water body or another zone of groundwater that has a concentration less than or equal to the specified level.

Proposed new §601.3(8) defines "Member agency" as one of the ten entities constituting the committee specified by TWC, §26.403 and §601.2, whether those entities consider themselves or in fact are legally separate agencies of the state. The new definition also specifies that not all member agencies have legal responsibilities related to the protection of groundwater, and specifies that those which do have responsibilities are those listed in TWC, §26.406(b).

The proposed amendment to §601.4, relating to Public Files, corrects the two legal citations and restricts the application of that rule to member agencies having responsibilities related to the protection of groundwater as newly defined in §601.3(8).

The proposed amendment to §601.5, relating to Joint Groundwater Monitoring and Contamination Report, specifies that the report describe the current status of groundwater monitoring programs conducted by or required by each member agency as newly defined in §601.3(8).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Ms. Mary Ambrose, designated chairman of the committee, determined that during the first five-year period the amendments

are in effect, there will be no fiscal implications to state and local government as a result of the administration of the proposed amendments. The purpose of the proposed amendments is to make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules. The effects of the proposed rule changes are not anticipated to be significant for any individual agency or organization that is a member of the committee or impose substantial costs. Similarly, fiscal implications are not anticipated to be significant for units of local government that are currently providing information for the report. Because the rules govern the actions of the committee member agencies and organizations, no fiscal implications or employment impacts are anticipated for any other party.

PUBLIC BENEFITS AND COSTS

Ms. Mary Ambrose, designated chairman of the committee, also determined that for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of this proposed rule change will be improved public knowledge of committee activities. No public costs of the proposed rule changes are anticipated because the changes only make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed amendments, which only make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

The committee reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The committee reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in §2001.0225(g)(3). The proposed rulemaking only makes grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules. These amendments are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, even if the proposed rules did meet the definition of a "major environmental rule," the proposed rules are not subject to §2001.0225 be-

cause they do not accomplish any of the four results specified in §2001.0225(a).

First, the proposal does not exceed a standard set by federal law because there is no equivalent federal statute for the reporting of groundwater contamination or for maintaining public files containing documented cases of groundwater contamination.

Second, this proposal does not exceed an express requirement of state law. The committee is specifically authorized under TWC, §26.406(d) to adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report. Also, the proposed changes only make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because this proposal only makes grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules. Finally, this proposal does not adopt a rule solely under the general powers of the committee instead of under a specific state law. The amendments are specifically proposed under TWC, §26.406(d).

TAKINGS IMPACT ASSESSMENT

The committee prepared a takings impact assessment for the rules in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to make grammatical and phrasing changes to conform with guidelines in the *Texas Legislative Council Drafting Manual* for drafting statutes and rules, to make changes in the current names of agencies, to correct legal citations, and to clarify what agencies are subject to the rules.

These rules provide for a listing of the duties and responsibilities assigned to the committee under TWC, §26.406, concerning the maintenance by certain state agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the Texas Commission on Environmental Quality (TCEQ), of annual groundwater monitoring and contamination reports and establish general policies of the committee to guide such implementation.

Because the rule governs the actions of the member agencies and organizations on the committee, it does not affect private real property and does not, in whole or in part, or temporarily or permanently, restrict or limit a property owner's right to the property that would otherwise exist in the absence of the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The proposed committee rulemaking does not authorize actions contained in the Coastal Coordination Act Implementation Rules in 31 TAC §505.11(a)(6) or (b)(2) or the Natural Resources Code (NRC), Chapter 33. The NRC, §33.205(a), states that "An agency or subdivision that takes an agency or subdivision action described by §33.2051 or §33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program."

31 TAC §505.11(a)(6) and (b)(2), which corresponds directly with NRC, §33.2051 and §33.2053, describes agency rule-making actions that require certain agencies to comply with NRC, §33.205(a) and (b), when adopting or amending a rule governing certain activities. However, these provisions do not list the committee as an agency subject to the provisions of NRC, §33.205(a) and (b), or that must demonstrate compliance with the goals and policies of the Coastal Management Program (CMP). The committee is described as "an interagency committee" in TWC, §26.403, with the power to adopt rules under TWC, §26.406(d). TWC, §26.403(b), designates the TCEQ as the lead agency for the committee, and provides that the TCEQ shall administer the activities of the committee; however, the committee is given separate statutory power to adopt rules under TWC, §26.406(d) and §26.408(c). Therefore, cited provisions of the TAC and the NRC do not apply to the committee's adoption of rules.

Nonetheless, should the rulemaking actions of the committee be interpreted for any reason as the TCEQ's adoption of rules, none of the proposed rules falls under the actions described in 31 TAC §505.11(a)(6) and (b)(2) or NRC, §33.2051 or §33.2053. Therefore, the requirements of the CMP do not apply to this rulemaking.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference TGWPC-Groundwater Contamination Report and may be submitted to Kathleen McCormack, Groundwater Planning and Assessment, MC 147, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4450. All comments sent by fax must be followed by an original, signed hard copy for the committee's records. Comments must be received by 5:00 p.m., June 12, 2006. For further information concerning this proposal, please contact Mary Ambrose, Designated Chairman, Texas Groundwater Protection Committee, at (512) 239-4813.

STATUTORY AUTHORITY

The amendments are proposed under TWC, §26.406, which provides the committee with rulemaking authority.

The proposed amendments implement TWC, §§26.401 - 26.408.

§601.1. Purposes of Rules.

The purposes [purpose] of this chapter are: [these sections is]

(1) to implement duties and responsibilities assigned to the committee under [the] Texas Water Code, §26.406, concerning the maintenance by member [certain state] agencies of public files containing documented cases of groundwater contamination and the publication by the committee, in conjunction with the commission, of annual groundwater monitoring and contamination reports; [and]

(2) to establish general policies of the committee to guide that [such] implementation; and [-]

(3) to specify the form and content of the notice of groundwater contamination required under Texas Water Code, §26.408.

§601.2. Applicability.

These rules specifically apply to each state agency or organization having membership on the committee. The committee is composed of:

(1) the [Texas Natural Resource Conservation Commission (or effective September 1, 2002, the) Texas Commission on Environmental Quality; [-]

(2) the [Texas] Department of State Health Services; [-]

(3) the Texas Department of Agriculture; [-]

(4) the Railroad Commission of Texas; [-]

(5) the Texas Water Development Board; [-]

(6) the Texas Alliance of Groundwater Districts; [-]

(7) the Texas Agricultural Experiment Station; [-]

(8) the Bureau of Economic Geology of the University of Texas at Austin; [-]

(9) the State Soil and Water Conservation Board; [-] and

(10) the Water Well Drillers and Water Well Pump Installers Program of the Texas Department of Licensing and Regulation.

§601.3. Definitions.

The following words and terms, when used in this chapter, [shall] have the following meanings [unless the context clearly indicates otherwise].

(1) Act--House Bill 1458 (71st Legislature, 1989 [Session]) codified, with amendments, as Texas Water Code, §§26.401 - 26.408 [26.407].

(2) Commission--[Texas Natural Resource Conservation Commission (or effective September 1, 2002, the) Texas Commission on Environmental Quality[)].

(3) (No change.)

(4) Documented groundwater contamination--A case of groundwater contamination in which a member [where an] agency has an established procedure for making a determination based on the quality of groundwater and the information pertinent to making the determination is maintained by that member [the] agency under §601.4(b) of this title (relating to Public Files).

(5) Enforcement action--Any action of the member agencies, identified in §601.2 of this title (relating to Applicability), that [which] accomplishes or requires the identification, documentation, monitoring, assessing, or remediation of groundwater contamination.

(6) (No change.)

(7) Groundwater contamination--The detrimental alteration of the naturally occurring physical, thermal, chemical, or biological quality of groundwater. Except for an underground source of drinking water granted an aquifer exemption by the commission with concurrence from the United States Environmental Protection Agency in accordance with 40 Code of Federal Regulations Parts 144 - 146, and 30 TAC Chapter 331 (relating to Underground Injection Control) [Furthermore], groundwater contamination, for purposes of inclusion of cases in the public files and the joint groundwater monitoring and contamination report, is [shall be] limited to contamination reasonably suspected of having been caused by activities or by entities under the jurisdiction of the member agencies identified in §601.2 [§601.4(b)] of this title (relating to Applicability [Public Files])[, except in the case of an underground source of drinking water granted an aquifer exemption by the commission with concurrence from the United States Environmental Protection Agency in accordance with 40 Code of Federal Regulations, Parts 144, 145, and 146, and 30 TAC Chapter 331 (Underground Injection Control);] and affecting groundwater that [which] contains a concentration of:

(A) (No change.)

(B) greater than 10,000 mg/liter of dissolved solids if it is:

(i) (No change.)

(ii) hydrologically connected with, and with the potential for contaminant movement to, a surface water body or another zone of groundwater that [which] has a concentration of less than or equal to 10,000 mg/liter of dissolved solids.

(8) Member agency--A state agency or organization designated by law under Texas Water Code, §26.403(c), to serve on the committee and be subject to its rules. Member agencies are listed in §601.2 of this title (relating to Applicability). Member agencies having responsibilities related to protection of groundwater include the commission, the Department of Agriculture, the Railroad Commission of Texas, and the State Soil and Water Conservation Board.

§601.4. Public Files.

(a) Subject to the limitations provided by [the] Texas Water Code, §§26.401 - 26.408 [26.407] (the Act), and the Texas Public Information Act, Texas Government Code, Chapter 552 [Open Records Act, Texas Civil Statutes, Article 6252-17a], information collected, assembled, or maintained by the committee and the member agencies having responsibilities related to protection of groundwater under the Act is a public record open to inspection and copying during regular business hours.

(b) Each member agency having [the] responsibilities related to the protection of groundwater under the Act shall maintain a public file of all documented cases of groundwater contamination that are reasonably suspected of having been caused by activities regulated by the member agency.

§601.5. Joint Groundwater Monitoring and Contamination Report.

In conjunction with the commission, the committee shall publish not later than April 1 of each year a joint groundwater monitoring and contamination report covering the activities and findings of the committee made during the previous calendar year. The report must:

(1) describe the current status of groundwater monitoring programs conducted by or required by each member [~~committee~~] agency [~~or organization~~] at regulated facilities or in connection with regulated facilities;

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602373

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services, TCEQ

Texas Groundwater Protection Committee

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 239-0348



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.24

The Texas Department of Public Safety proposes an amendment to §15.24, concerning the identification of applicants for an original, renewal or duplicate driver license or identification certificate.

The amendment to §15.24 is proposed in an effort to address the concerns of foreign students and foreign visiting workers who apply for a driver license or identification certificate. This proposal will amend §15.24 to expand the types of documents that are acceptable as primary identification of an applicant without compromising the security of the driver license or identification certificate. The proposed amendment would add a foreign passport accompanied by an appropriate document issued by the United States Department of State and other verifiable documentation as necessary to the list of acceptable primary documentation. This amendment is necessary to enable a foreign student or worker to obtain a driver license or identification certificate with a foreign passport accompanied by appropriate documentation without additional supporting documents. This amendment will make it possible for these applicants to obtain a valid Texas driver license or identification certificate while conducting business or study in the United States.

Additionally, the amendment is necessary to reflect that the document previously issued by the United States Immigration and Naturalization Service is now issued by the United States Bureau of Citizenship and Immigration Services.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to assist in the positive identification of an applicant for a Texas driver license, commercial driver license or identification certificate. There is no anticipated economic cost to small or large businesses. The cost to individuals who are required to comply with the amendment as proposed will be the standard cost of obtaining a Texas driver license, commercial driver license or identification certificate.

A public hearing on the proposal will be held in Austin on May 23, 2006 at 9:00 a.m. in the Department of Public Safety Criminal Law Enforcement Auditorium, Building E, located at 6100 Guadalupe Street, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing.

Comments on the proposal may be submitted to Claire McGuinness, Senior Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 and §521.142 are affected by this proposal.

§15.24. Identification of Applicants.

All original applicants for a driver license or identification certificate must present proof of identity satisfactory to the department. All documents must be verifiable. There are three categories of documents that may be presented to establish proof of identity.

(1) Primary identification. These items are complete within themselves and require no supporting instruments: These documents must contain the applicant's complete name and full date of birth:

(A) Texas driver license (DL) or identification certificate (ID) with photo within two years of expiration date;

(B) unexpired United States passport;

(C) United States citizenship (naturalization) certificate with identifiable photo;

(D) unexpired United States Bureau of Citizenship and Immigration Services [Immigration and Naturalization Service] document with verified data and identifiable photo; or,

(E) unexpired United States military ID card for active duty, reserve or retired personnel with identifiable photo.

(F) foreign passport with a visa issued by the United States Department of State (valid or expired) with unexpired I-94 marked valid for a fixed duration. The Form I-94 must have been issued for a period of at least one year and must be valid for no less than six (6) months from the date presented to the department with a completed application.

(G) foreign passport with a visa issued by the United States Department of State (valid or expired) with an I-94 marked valid for the duration of stay accompanied by appropriate documentation.

(2) Secondary identification. These items are recorded governmental documents (United States, 1 of the 50 states, a United States territory, District of Columbia or Canadian province):

(A) original or certified copy of a birth certificate issued by the appropriate State Bureau of Vital Statistics or equivalent agency;

(B) original or certified copy of United States Department of State Certification of Birth (issued to United States citizens born abroad); or

(C) unexpired photo DL or photo ID issued by another (United States) state, US territory, the District of Columbia, or Canadian province;

(D) original or certified copy of court order with name and date of birth (DOB); or,

(E) for applicants born before 1961, the following items would be acceptable in this category:

(i) original or certified copy of Form DD-214;

(ii) original or certified copy of other state or federal governmental record that states name and DOB (such as United States census records or Social Security records).

(3) Supporting identification. These items consist of other records or documents that aid examining personnel in establishing the identity of the applicant. The following items are not all inclusive. The examining or supervisory personnel may determine that an unlisted document meets the department's needs in establishing identity.

(A) school records;

(B) insurance policy (at least two years old);

(C) vehicle title;

(D) military records;

(E) unexpired military dependant identification card;

(F) original or certified copy of marriage license or divorce decree;

(G) voter registration card;

(H) Social Security card;

(I) pilot's license;

(J) concealed handgun license;

(K) Texas driver's license temporary receipt;

(L) expired DL or ID issued by another state, territory, District of Columbia or Canadian province that is within two years of the expiration date;

(M) a foreign passport (with or without a United States Visa);

(N) a consular document issued by a state or national government; or

(O) an offender identification card or similar form of identification issued by the Texas Department of Criminal Justice.

(4) Every original applicant must present:

(A) one piece of primary identification, or

(B) one piece of secondary identification plus two pieces of support identification; or,

(C) two pieces of secondary identification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2006.

TRD-200602306

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 424-2135



37 TAC §15.25

The Texas Department of Public Safety proposes an amendment to §15.25, concerning the application requirements for an original, renewal or duplicate driver license or identification certificate.

The amendment to §15.25 is proposed in an effort to clarify that an applicant for an original, renewal or duplicate driver license or identification certificate must provide a Texas residence address. This amendment is necessary to allay confusion regarding where an applicant's residence address may be located. Additionally, the amendment removes language regarding the use of an out-of-state address.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will

be no fiscal implications for state or local government or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the department better able to serve the residents of Texas by requiring that an applicant for a driver license or identification certificate provide a Texas residence address. There is no anticipated economic cost to small or large businesses. The cost to individuals who are required to comply with the amendment as proposed will be the standard cost of obtaining a Texas driver license, commercial driver license or identification certificate.

A public hearing on the proposal will be held in Austin on May 23, 2006 at 9:00 a.m. in the Department of Public Safety Criminal Law Enforcement Auditorium, Building E, located at 6100 Guadalupe Street, Austin, Texas. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing.

Comments on the proposal may be submitted to Claire McGuinness, Senior Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §521.005.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.005 and §521.142 are affected by this proposal.

§15.25. Address.

The address requirement [requirements] for a driver license [driver's licenses] and identification certificate is [certificates are]:

(1) The best Texas residence address obtainable must be given. A business address is not acceptable; unless the applicant is a traveling salesman or other transient, his Texas business address may be used.

(2) The complete street address including apartment numbers and such terms as street, circle, drive, or court should be used whenever possible. In rural areas, route number and box number should be given. If there is no mail delivery at the address shown, post office box number or other mailing address may be shown with the street address. This address is required for a Commercial Driver's License (CDL) and a nonCDL.

(3) The application form also provides space for a mailing address. If an applicant has a mailing address other than the Texas residence address, this address may include post offices boxes, business addresses, or other mailing locations. A mailing address is required on a CDL. This address may be used with a Texas residence address on a nonCDL data card.

(4) The city, state, and zip code must be shown as part of the address on all applications for driver's licenses and identification certificates. The zip code may be a five or nine digit number until such time as the nine digit number is required by the department or postal authorities.

(5) A general delivery address must not be used except in very small communities when no street or route addresses are available.

(6) A post office box number is not acceptable if a better address can be obtained. The post office box number may be listed in addition to a Texas residence address.

(7) Apartment or residence hotel addresses may be given.

(8) Applicant's near relative's address may be accepted if Texas residence of the applicant is not permanent and if mail can be forwarded to the applicant.

(9) To insure delivery "In care of" should be used as a part of any address where mail is to be delivered to the address of another person.

[(10)] ~~Out-of-state residence addresses may be used on non-CDL licenses if they are better or more permanent than an in-state license.]~~

(10) [(11)] Military personnel should give complete address such as: John Henry Smith, Co. B, 25th Inf., Camp Barkeley, Abilene, Texas. If a member of the armed forces has a residence address in Texas, it should be used. A member of the armed forces may provide a residence address outside of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 25, 2006.

TRD-200602307

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135



PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.6

The Texas Board of Criminal Justice proposes an amendment to Title 37, Part 6, Chapter 151, General Provisions, §151.6, Petition for the Adoption of a Rule. The amendments are necessary to conform to state law and add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years the amendments will be in effect, enforcing or administering the amended rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will not be an economic impact on persons required to comply with the amendments as proposed. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the amended rule, will be to provide the public with an opportunity to participate in rulemaking.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposed amendment.

The amendments are proposed under Texas Government Code, §2001.021.

Cross Reference to Statutes: Texas Government Code, Chapter 2001.

§151.6. *Petition for the Adoption of a Rule.*

(a) Submission of the petition.

(1) Any person may petition a State Agency [the agency] to adopt a rule as defined by the Texas Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) A [The] petition for a rule under Title 37 of the Texas Administrative Code shall be mailed or delivered to the General Counsel of the Texas Department of Criminal Justice (TDCJ or the Agency) [general counsel of the Texas Board of Criminal Justice] at P.O. Box 13084, Austin, Texas 78711 [the Austin headquarters office of the Texas Department of Criminal Justice].

(3) The petition shall be in writing, shall contain the petitioner's name and address, and shall describe the rule and the reason for making such petition [it]. If the General Counsel [general counsel of the Texas Board of Criminal Justice] determines that further information is necessary to assist the Agency [agency] in reaching a decision, the General Counsel [general counsel] may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; [and]

(D) whether there will be an economic impact on persons required to comply with the proposed rule;

(E) whether the proposed rule will have an effect on small or micro businesses; and

(F) [(D)] the public benefit anticipated as a result of adopting the rule or the anticipated injury of inequity that could result from the failure to adopt the proposed rule.

(b) Consideration and disposition of the petition.

(1) Except as provided in subsection (c) of this section, the Agency [agency] shall consider and dispose of all petitions submitted.

(2) Within 60 days after receipt of the petition by the General Counsel [general counsel's office of the petition], or within 60 days after receipt by the General Counsel [general counsel's office] of a re-submitted petition in accordance with subsection (a)[(4)]-(3) of this section, the Agency [agency] shall deny the petition or institute rule-making procedures [procedure] in accordance with established Agency procedures and the Texas Administrative Procedure Act. The Agency [agency] may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) If the Agency [agency] denies the petition, the General Counsel [general counsel] shall give the petitioner written notice of the Agency's [agency's] denial and the reasons for the denial.

[(4) The petitioner may appeal the denial to the Board Chairman, whose decision is final.]

(c) Subsequent petitions to adopt the same or similar rule. [All initial petitions for the adoption of a rule shall be presented to and decided by the agency in accordance with the provisions of paragraphs (4) and (2) of this subsection.] The General Counsel [general counsel]

may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602346

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 463-9693



37 TAC §151.55

The Texas Board of Criminal Justice proposes an amendment to revise Title 37, Part 6, Chapter 151 General Provisions, §151.55, Disposal of Surplus Agricultural Goods and Agricultural Personal Property. The proposed revisions are necessary to make minor non-substantive changes to conform to existing organizational structure and law.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that there will not be an economic impact on persons required to comply with the rule. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be to offer for sale or donation surplus agricultural goods in the usual market or to state, local, or non-profit organizations.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P. O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code, §497.113.

Cross Reference to Statutes: Texas Government Code, Chapter 497.

§151.55. *Disposal of Surplus Agricultural Goods and Agricultural Personal Property.*

(a) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ or Board) [Board] that surplus agricultural goods produced by the Texas Department of Criminal Justice (TDCJ or Agency) [TDCJ] and surplus agricultural personal property utilized in the [TDCJ's] TDCJ's agricultural operations be disposed in the most efficient manner possible for the goods or personal property being disposed.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Surplus agricultural goods--Those agricultural commodities grown, produced, purchased, or acquired by the TDCJ for use within the TDCJ or other state or local agency or non-profit

organization which are excess to the needs of the TDCJ operations, which are not required for its foreseeable needs, and which have been determined to be surplus by the TDCJ Chief Financial Officer ~~[Deputy Executive Director]~~ in coordination with the TDCJ [Assistant] Director of Agribusiness, Land and Minerals. ~~[for Agriculture.]~~

(2) Surplus agricultural personal property--Personal property related to agricultural operations of the TDCJ and grown, produced, purchased, or acquired by the TDCJ, including livestock and farming equipment and implements, which is excess to the needs of the TDCJ operations, which is not required for its foreseeable needs, and which has been determined to be surplus by the Chief Financial Officer in coordination with the Director of Agribusiness, Land and Minerals. ~~[Deputy Executive Director]~~

(c) Procedures.

(1) The Board [board] hereby authorizes the Chief Financial Officer [Deputy Executive Director] or his Designee to sell or dispose of surplus agricultural goods and surplus agricultural personal property. Sale or disposal shall be accomplished in such manner so as to provide, if possible, reasonable consideration for the sale or disposal of such surplus items.

(2) When items of agricultural goods or agricultural personal property are considered surplus, the ~~[Assistant] Director of Agribusiness, Land and Minerals [for Agriculture]~~ shall provide a written report to the Chief Financial Officer [Deputy Executive Director] setting forth those items of agricultural goods and agricultural personal property considered to be surplus. In those instances requiring immediate action due to the perishable nature of such items, the report may be transmitted via fax ~~[Facsimile (Fax)]~~ with written follow-up by mail. The Chief Financial Officer [Deputy Executive Director] shall review such report and determine if such items shall be sold or disposed as surplus agricultural goods or personal property.

(3) The Chief Financial Officer [Deputy Executive Director] shall review the report submitted as required herein and shall determine if such reported items are surplus to the needs of the TDCJ, and the terms and method of sale or disposal of such surplus agricultural goods and surplus agricultural personal property. Sale or disposal of surplus agricultural goods or agricultural personal property includes:

- (A) sale in the usual market for such items;
- (B) direct sale by bid or negotiated sale;
- (C) exchange for other agricultural products and finished goods; and
- (D) donation of food commodities to state, local, or non-profit organizations.

(4) Proceeds from the sale of surplus agricultural goods and surplus agricultural personal property shall be deposited in the appropriate TDCJ fund to be utilized for purchase of agricultural goods and agricultural personal property necessary for the operation of the TDCJ.

(5) Prices of sales shall be at prevailing market prices or better.

(6) The TDCJ staff shall include, as an agenda item for the Consent Agenda at the next regularly scheduled Board meeting following sale or disposition of surplus agricultural items, a report detailing the sale or other disposition of surplus agricultural goods and agricultural personal property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602347

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 463-9693



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.11, 745.201, 745.243, 745.273, 745.275, 745.321, 745.323, 745.325, 745.341, 745.343, 745.345, 745.347, 745.349, 745.351, 745.385, 745.435, 745.501, 745.505, 745.507, 745.509, 745.519, 745.8307, 745.8605, 745.8613, 745.8683, 745.8807, 745.8835, 745.8837, 745.8843, 745.8855, and 745.8875; new §§745.277, 745.279, 745.281, 745.401, 745.403, 745.405, 745.407, 745.437, 745.901, 745.903, 745.905, 745.907, 745.909, 745.911, 745.913, 745.915, 745.8419, 745.8425, 745.8661, and 745.8841; and the repeal of §§745.401, 745.403, 745.405, 745.407, 745.409, 745.8419, and 745.8841, in its Licensing chapter.

The proposed changes are the result of legislation passed during the 79th Legislature, Regular Session, 2005, and changes necessary to provide clarification to existing rules.

Legislated changes are the result of requirements stated in House Bill (H.B.) 183 and Senate Bill (S.B.) 6, passed by the 79th Legislature, Regular Session, 2005. These laws require the Executive Commissioner to adopt or amend regulated child-care facility rules relating to (1) a new definition for noncontiguous facilities; (2) controlling persons; (3) denial of permit applications submitted by an entity who has had a license revoked in another state; (4) invalidating agency home verifications if a public hearing was not held as required; and (5) changing the term "provisional license" to "initial license." Clarifications to existing rules address exemptions to regulation, public hearings, permit issuance, permit suspension due to non-payment of fees, adverse action, and due process. Changes to specific rules are described below.

Section 745.11 expands the definition of "I, my, you, and your" by adding the phrase "or the context clearly indicates otherwise."

Section 745.201 is required by §1.93 of S.B. 6., Human Resources Code (HRC) §42.041(c), which describes when a non-contiguous residential operation may operate under a single license.

Section 745.243 is revised as follows. Paragraph (2) is amended to conform to Chapter 747, Minimum Standards for Registered Child-Care Homes. Paragraph (3) changes the name of a provisional license to an initial license as required by S.B. 6. Paragraph (4) adds the requirement to obtain a Controlling Person Form at the time of application so that Licensing is aware of all of

the controlling persons involved in an operation prior to licensure. Subparagraphs (G) and (J) are combined and are now subparagraph (H), in order to clarify what is needed at the time of application for a residential permit, which are those items required by the residential minimum standards. Paragraph (6) adds the requirement to obtain a Controlling Person Form. Subparagraphs (E) and (F) are combined and become subparagraph (F) in order to clarify what is needed at the time of application for a residential permit. Sections 745.341, 745.343, 745.345, 745.347, 745.349, 745.351, 745.501, 745.509, 745.519, 745.8307, and 745.8875 also change the name of a provisional license to an initial license.

Sections 745.273 and 745.275 include provisions from HRC §42.0461, clarifying when independent foster family or group homes are subject to public notice and hearing requirements.

Sections 745.277, 745.279, and 745.281 list actions taken by Licensing when public notice and hearing requirements are not met as required in HRC §42.0461 and §1.00 of S.B. 6.

Section 745.321 changes the time frame to make a decision regarding issuance of a permit from 60 days to two months, as stated in HRC §42.046.

Sections 745.323 and 745.325 change the title of the Director of Licensing to the Assistant Commissioner for Child-Care Licensing, and update the name of this agency.

Section 745.385 amends the rule as required by §1.93 of S.B. 6., HRC §42.041(c), to add a grandfather clause for the residential child-care operations that will be affected by the changes to §745.201(1) regarding non-contiguous operations.

Sections 745.401, 745.403, 745.405, and 745.407 (previously §745.401 to §745.409) are a rewrite of the previous division of rules to add the HRC 42.072 requirement of a five-year bar from reapplying after denial or revocation of a residential permit. It also clarifies when a denial or revocation is final.

Section 745.435 is clarified to complement HRC §42.048(e), regarding revocation via a change in location.

Section 745.437 is clarified to complement HRC §42.048(e), regarding revocation via a change in ownership. This rule also clarifies what circumstances constitute and do not constitute a change in ownership.

Sections 745.505, 745.507, and 745.509 are revised to be more consistent with HRC §42.054(f), and to reflect that the permit holder's failure to pay an annual fee results in an automatic suspension of the permit.

Sections 745.901, 745.903, 745.905, 745.907, and 745.909 implement §1.90(18) and §1.107, S.B. 6 by defining controlling person, establishing how an operation has to submit information regarding a controlling person, establishing when Licensing will designate someone as a controlling person, establishing the consequences of such a designation, and establishing due process rights for "designated controlling persons."

Section 745.911 implements §1.105 of S.B. 6 by adding a provision that lists the consequences of being denied a license by us due to out-of-state compliance history.

Sections 745.913 and 745.915 add provisions to implement §1.105 and §1.107 of S.B. 6. Licensing will conduct checks and notify residential operations if a person is prohibited from employment in an operation.

Section 745.8419 clarifies Licensing's authority to leave an operation with copies of records from that operation.

Section 745.8425 contains information from previous §745.8419.

Section 745.8605 adds reasons when Licensing can take remedial action. This is based on §§1.99, 1.100, 1.107, and 1.110 of S.B. 6, and S.B. 325.

Section 745.8613 adds the right to a due process hearing when Licensing imposes an administrative penalty against an operation.

Section 745.8661 clarifies existing statute and requires that all operations send notification to parents or managing conservators after an adverse action is final. This is based on HRC §42.077(d).

Section 745.8683 updates the name of this agency.

Section 745.8807 is changed to apply to both administrator license types, to clarify under what circumstances an operation may request an administrative review, to add that a designated perpetrator of child abuse/neglect in a Licensing investigation is eligible to request an administrative review, and to add that a person designated as a controlling person is eligible to request an administrative review.

Section 745.8835 adds two situations when a person may request a due process hearing: (1) When Licensing takes action against a controlling person; and (2) When Licensing imposes an administrative penalty be imposed against a permit holder or controlling person. Also, the last paragraph of this rule has been changed to apply to both administrator license types.

Section 745.8837 is revised so it applies to both administrator license types. Two subsections are added to show who may request a due process hearing if certain actions are taken against them: (1) a controlling person; and (2) the governing body, director/administrator, or the designee if Licensing recommends the imposition of an administrative penalty.

Section 745.8841 (previous §745.8841) is rewritten to remove the address for the docket clerk, and to clarify that the address will be included in the notice sent to the permit holder.

Section 745.8843 clarifies the procedures DFPS takes after a person requests a due process hearing. It also creates circumstances in which DFPS may nullify a request for a release hearing without the person losing the right to a request a hearing in the future.

Section 745.8855 clarifies when an adverse action decision is effective once the right to the due process hearing has been waived.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the protection of children in out-of-home care will be enhanced and the quality of regulated child care will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-344, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 2. DEFINITIONS FOR THE LANGUAGE USED IN THIS CHAPTER

40 TAC §745.11

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(a).

§745.11. *What words must I know to understand this chapter?*

The following words have the following meanings when used in this chapter:

(1) I, my, you, and your--An applicant or permit holder, unless otherwise stated or the context clearly indicates otherwise.

(2) We, us, our, and Licensing--The Licensing Division of the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) [~~(PRS)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER D. APPLICATION PROCESS

DIVISION 1. DEFINITIONS

40 TAC §745.201

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.201. *What words must I know to understand this subchapter?*

These words have the following meanings:

(1) Nearby--For child day-care operations, "nearby" [nearby] means next to, across the street from, or in the same city block. For residential child-care operations, "nearby" [nearby] means across the street from, in the same city block, or on the same property [the actual physical distance between the facilities makes it possible to provide appropriate management and supervision at each site].

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. SUBMITTING THE APPLICATION MATERIALS

40 TAC §745.243

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.243. *What does a completed application for a permit include?*

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 40 TAC §745.243

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. PUBLIC NOTICE AND HEARING REQUIREMENTS FOR RESIDENTIAL CHILD-CARE OPERATIONS

40 TAC §§745.273, 745.275, 745.277, 745.279, 745.281

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.273. Which residential child-care operations [operators] must meet the public notice and hearing requirements?

(a) All [applicants to be an] independent foster family or foster group home operations applying for a permit to operate or requesting to amend their permit to increase capacity and any child-placing agency planning to verify an agency foster family or foster group home must meet the public notice and hearing requirements if:

(1) - (2) (No change.)

(b) All other residential child-care operations (not including maternity homes) applying for a permit to operate or requesting [applying] to amend their license to increase capacity must meet the public notice and hearing requirements if they are located in a county with a population of less than 300,000.

§745.275. What are the specific requirements for a public notice and hearing?

The following chart lists the public notice, hearing requirements, and subsequent report you must complete:

Figure: 40 TAC §745.275

§745.277. What will happen if I fail to comply with public notice and hearing requirements?

If you fail to comply with any one of the public notice and hearing requirements that are set forth under §745.273 of this title (relating to Which residential child-care operations must meet the public notice and hearing requirements?) and §745.275 of this title (relating to What are the specific requirements for a public notice and hearing?), we may do the following, as applicable:

- (1) Deny you a permit;
- (2) Deny you an amendment to your permit to increase capacity;
- (3) Prohibit you from verifying the agency home; or
- (4) Invalidate the verification of the agency home.

§745.279. How may the results of a public hearing affect my application for a permit or a request to amend my permit?

We may deny you a permit or an amendment to increase capacity if we determine that:

- (1) The community has insufficient resources to support the children that you propose to serve;
- (2) Issuing the license or amending your permit would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program, and the increase would adversely affect the children that you propose to serve; or
- (3) Issuing the license or increasing the capacity would have a significant adverse impact on the community and would limit opportunities for social interaction for the children that you propose to serve.

§745.281. How may the results of a public hearing affect my ability to verify an agency foster home or agency foster group home?

We may prohibit you from verifying the proposed agency foster home or agency group foster home if we determine that:

- (1) The community has insufficient resources to support the children that the home would serve;
- (2) The home would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program, and the increase would adversely affect the children that the home would serve; or
- (3) The home would have a significant adverse impact on the community and would limit opportunities for social interaction for the children that the home would serve.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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DIVISION 6. REVIEWING THE APPLICATION FOR COMPLIANCE WITH MINIMUM STANDARDS, RULES, AND STATUTES

40 TAC §§745.321, 745.323, 745.325

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.321. What will Licensing do after accepting my application?

After we accept your application, our process of deciding to issue or deny varies depending on the type of permit you requested. For example, we must conduct an on-site inspection before issuing a registration or license to determine compliance with licensing minimum standards, rules, and statutes. However, regardless of the type of permit you have requested, we will decide to issue or deny the permit no later than two months [60 days] after we accept your application.

§745.323. What if Licensing exceeds its timeframes for processing my application?

You may file a complaint with the Assistant Commissioner for Child-Care [~~Director of~~] Licensing. The Assistant Commissioner [~~director~~] will resolve the dispute in a timely manner. We must reimburse you for your application fee if we do not establish good cause for exceeding the time limit.

§745.325. How do I file a complaint?

You must send a written request within 30 days after our time limit expires. You must send your request stating the nature of the dispute to the Assistant Commissioner for Child-Care [~~Director of~~] Licensing, Mail Code E-550, Texas Department of Family and Protective [~~and Regulatory~~] Services, P.O. Box 149030, Austin, Texas 78714.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Family and Protective Services

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DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §§745.341, 745.343, 745.345, 745.347, 745.349, 745.351

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.341. What type of permit will Licensing issue me?

(a) (No change.)

(b) We issue licensed [~~all other types of~~] operations either an initial [~~a provisional~~] permit (time-limited) or a non-expiring permit.

§745.343. What is the difference between an initial [~~a provisional~~] and non-expiring permit?

An initial [~~A provisional~~] permit is a time-limited permit allowing you to operate pending the issuance of a non-expiring permit. A non-expiring permit is effective as long as:

(1) You pay your annual fees, or you are exempt from paying them as set forth in §745.503 of this title (relating to Is anyone exempt from paying fees?);

(2) You remain at the same location and under the same ownership [-] (See §745.437 of this title (relating to What is a change in the ownership of an operation?));

(3) - (4) (No change.)

§745.345. When does Licensing issue initial licenses [~~provisional permits~~?

We must issue an initial license [~~a provisional permit~~] when you meet our Licensing [~~licensing~~] minimum standards, rules, and statutes and one of the following situations exists:

(1) - (3) (No change.)

(4) We licensed you for one type of child care, and you apply to add another type of child care to your program (an initial [~~a provisional~~] permit is issued for the new type of child care); or

(5) Change in ownership results in changes in policy and procedure or in the staff who have direct contact with the children or maternity home clients. (See §745.437 of this title (relating to What is a change in the ownership of an operation?)). [~~A change in ownership includes the sale of an operation; a change in the legal organizational structure of an operation; or if the operation is incorporated, the sale of the corporation.~~]

§745.347. How long is an initial [~~a provisional~~] permit valid?

An initial [~~A provisional~~] permit is valid for six months from the date we issue it. We may renew it up to an additional six months. You may only have an initial [~~a provisional~~] permit for a maximum of one year. The initial [~~provisional~~] permit expires when we issue you a non-expiring one.

§745.349. What if I am not able to care for children during the initial [~~provisional~~] period?

We cannot determine compliance with all the Licensing [~~licensing~~] minimum standards unless you have children (or maternity home clients) in care. If you do not have children (or maternity home clients) in care during the initial license period [~~One of the following happens~~]:

(1) We may renew your initial [~~provisional~~] permit, if you have not exceeded the maximum one year period; [~~or~~]

(2) We may take remedial action, as appropriate; and/or

(3) [(2)] You may submit a new application form and fees [~~; if you exceed the provisional period of one year~~].

§745.351. If I have an initial [~~a provisional~~] permit, when will I be eligible for a non-expiring permit?

You will be eligible for a non-expiring permit when:

(1) Your initial ~~[provisional]~~ permit has been in effect for at least three months;

(2) (No change.)

(3) The Licensing staff ~~[representative]~~ has made three inspections, unless supervisory approval is obtained to make fewer visits; and

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Department of Family and Protective Services

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DIVISION 8. DUAL AND MULTIPLE PERMITS

40 TAC §745.385

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.385. *Can multiple operations operate under one permit?*

(a) Multiple operations may not operate under one permit unless they are:

(1) Contiguous to one another, are the same type of child-care operation, and have the same governing body; or

(2) Not contiguous, but they are the same type of child-care operation, are nearby one another, and operate as a single operation as evidenced by staffing, finance, and administrative supervision effectively supporting the operations.

(b) A permit that we issued prior to September 1, 2005, that allows multiple residential child-care operations to operate under that permit remains valid regarding the addresses listed on the permit until it is revoked or voluntarily relinquished.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

Department of Family and Protective Services

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DIVISION 9. REAPPLYING FOR A PERMIT

40 TAC §§745.401, 745.403, 745.405, 745.407, 745.409

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Senate Bill 6, 79th Legislature, Regular Session, 2005.

§745.401. *Can I reapply for a permit after Licensing denies me one?*

§745.403. *Can I operate after I reapply for a permit?*

§745.405. *What fees must I pay when I reapply for a permit?*

§745.407. *Can I apply for another permit after Licensing revokes my permit?*

§745.409. *What fees must I pay when I apply for another permit after Licensing revokes my permit?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §§745.401, 745.403, 745.405, 745.407

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.401. What fees must I pay when I reapply for a permit?

Unless you are reapplying within 30 days after you withdrew your original application, you must pay all fees. The reapplication is considered an original application.

§745.403. Can I apply for another permit after Licensing denies or revokes my permit?

(a) If we revoke your child day-care permit or deny you a permit to operate a child day-care operation on or after September 1, 2005, you may not apply for another permit before the second anniversary of the date on which the denial or revocation takes effect.

(b) If we revoke your residential child-care permit or deny you a permit to operate a residential operation on or after September 1, 2005, you may not apply for another permit before the fifth anniversary of the date on which the denial or revocation takes effect.

(c) If our revocation of your permit took effect before September 1, 2005, you may not apply for another one before the second anniversary of the date on which the revocation took effect.

(d) If our denial of your permit took effect before September 1, 2005, you may reapply for a permit if your operation has remained closed between the effective date of the denial and the reapplication.

(e) A revocation or denial takes effect when:

(1) You have waived or exhausted your due process rights regarding the revocation or denial; and

(2) Our revocation or denial of your permit is upheld.

(f) This rule does not apply if your permit is revoked solely because you have relocated your operation or changed ownership.

§745.405. Can I operate after I apply for a permit?

You cannot operate merely because you apply for a permit. We may deny you a permit if you operate before a permit is issued.

§745.407. What fees must I pay when I apply for another permit after Licensing revokes my permit?

In addition to the fees you would pay with an original application, you must reimburse us for the cost of publishing the notice of revocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel

Department of Family and Protective Services

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DIVISION 10. RELOCATION OF OPERATION

40 TAC §745.435, §745.437

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code

§531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.435. What must I do if I relocate my operation after I receive my license or certification?

(a) A change in location automatically revokes your permit.

(b) If you are going to relocate your operation for any reason, you must notify us as early as possible before the move [~~; but no later than 15 days after the move.~~] to voluntarily relinquish your permit. You may reapply for a permit [license] to operate at your new location. See Division 3 of this subchapter (relating to Submitting the Application Materials).

(c) If you fail to notify us before you relocate [~~within 15 days after the relocation~~], we may deny you a [~~revoke your~~] permit for the new location [~~and you must not provide care~~].

§745.437. What is a change in the ownership of an operation?

(a) A change in ownership of an operation occurs when:

(1) The owner stated on the permit no longer owns the operation;

(2) The governing body stated on the permit no longer has the ultimate authority and responsibility for the operation;

(3) There is a change in the legal organizational structure of the operation; or

(4) If the permit holder is a type of business entity, that business entity is sold, except as set forth in subsection (b) of this section.

(b) A change in ownership of an operation does not include the acquisition of a corporate permit holder's publicly traded stock if the following conditions exist:

(1) The corporate permit holder listed on the application and on the permit will continue to exist as the same corporate entity and to own and operate the operation;

(2) There will be no change in the operation's policy or procedure because of the transaction;

(3) There will be no change in the staff who have contact with children in care because of the transaction; and

(4) Any change in the day-to-day operations that might occur after the sale is in the ordinary course of business and not as a result of the stock transaction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. FEES

40 TAC §§745.501, 745.505, 745.507, 745.509, 745.519

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.501. *What type of fees may Licensing charge me?*

We may charge the following fees:

- (1) - (2) (No change.)
- (3) Fees for issuing your initial [~~provisional~~] license;
- (4) Fees for renewing your initial [~~provisional~~] license;
- (5) - (7) (No change.)

§745.505. *What fees must I pay to list my family home and maintain the listing?*

The following chart contains the fees required for listed family homes, when the fees are due, and the consequences for failure to pay the fees on time. Note that for listed family homes the fees for background checks are included in the \$20 application and annual fees.

Figure: 40 TAC §745.505

§745.507. *What fees must I pay to register my child-care home and maintain the registration?*

The following chart contains the fees required for registered child-care homes, when the fees are due, and the consequences for failure to pay the fees on time:

Figure: 40 TAC §745.507

§745.509. *What fees must I pay to apply for and maintain a license for an operation?*

The following chart contains fees required for licenses, (including child day-care and residential child-care operations, child-placing agencies, and maternity homes), when the fees are due, and the consequences for failure to pay the fees on time:

Figure: 40 TAC §745.509

§745.519. *Are any fees refundable?*

The following fees are refundable under the conditions noted:

- (1) (No change.)
- (2) We refund the initial [~~provisional~~] license fee if the application is withdrawn, or the license is not issued;
- (3) We refund the non-expiring license fee if the initial [~~provisional~~] license expires without the non-expiring license being issued; and

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. RESIDENTIAL CONTROLLING PERSON AND CERTAIN EMPLOYMENT PROHIBITED

40 TAC §§745.901, 745.903, 745.905, 745.907, 745.909, 745.911, 745.913, 745.915

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.901. *Who is a controlling person at a residential child-care operation?*

(a) A controlling person of a residential child-care operation is any:

(1) Owner of the operation or member of the governing body of the operation, including, as applicable, an executive, an officer, a board member, a partner, or a sole proprietor;

(2) Person who manages, administers, or directs the operation or its governing body; or

(3) Person who either alone or in connection with others has the ability to influence or direct the management, expenditures, or policies of the operation. For example, a person may have influence over the operation because of a personal, familial, or other relationship with the governing body, manager, or other controlling person of the operation.

(b) A person does not have to be present at the operation or hold an official title at the operation or governing body in order to be a controlling person.

(c) An employee, lender, secured creditor, or landlord of the operation is not a controlling person unless the person meets a definition in subsection (a) of this section.

§745.903. *When must I submit to Licensing information about a person whom I consider to be a controlling person at my residential child-care operation?*

We will provide you with a Controlling Person Form. You must provide us information on the form about each person that is a controlling person at your operation as defined in §745.901(a) of this title (relating to Who is a controlling person at a residential child-care operation?). You must complete and submit this form to your local Licensing office:

(1) When you apply for your permit; or

(2) Within two days after a person becomes a controlling person at your operation.

§745.905. When will Licensing designate someone at my residential child-care operation as a controlling person?

(a) We will designate each person who meets the definition of a controlling person in §745.901(a) of this title (relating to Who is a controlling person at a residential child-care operation?) as a controlling person at your operation when:

(1) We revoke your permit; or

(2) You voluntarily close your operation or relinquish your permit after you receive notice of our intent to revoke your permit or that we are revoking your permit.

(b) We may designate a person at your operation as controlling, regardless of whether you submitted their name on a Controlling Person Form.

§745.907. What are the consequences of Licensing designating me as a controlling person?

(a) If we designate you as a controlling person:

(1) We may not issue you a permit of any kind for five years after our designation is sustained;

(2) You may not be the controlling person at a residential child-care operation for five years after the designation is sustained; and

(3) A residential child-care operation may not employ you for five years after the designation is sustained.

(b) Our designation of you as a controlling person is sustained when:

(1) You have waived or exhausted your due process rights regarding the designation; and

(2) The designation is upheld.

§745.909. What due process rights do I have if Licensing designates me as a controlling person?

(a) If we designate you as a controlling person, we will offer you an administrative review and due process hearing. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(b) At our discretion, we may combine the administrative review with a review regarding the revocation. The administrative law judge may combine hearings that involve issues related to the same decision or action.

§745.911. In what other circumstances may I not employ someone because of his previous involvement with a residential child-care operation?

(a) You may not employ a person in any capacity to work in a residential child-care operation if we denied the person a permit because the:

(1) Person is barred from operating a residential child-care operation in another state; or

(2) Person's permit to operate a residential child-care operation in another state was revoked.

(b) The person is prohibited from employment in a residential child-care operation on or after the denial referred to in subsection (a) of this section is sustained.

(c) If the person is no longer barred from operating in the other state or is subsequently allowed to operate in the other state, then you may employ the person if approved by Licensing.

§745.913. When does Licensing check whether someone is ineligible for employment at my residential child-care operation?

(a) When you submit a Controlling Person Form to us, we will check to see if any person listed on the form is a sustained controlling person or if the person was denied a residential permit due to compliance history in another state.

(b) When you submit a Request for Criminal History and Central Registry Check form for staff as required under §745.615 of this title (relating to On whom must I request background checks?), we will check whether the person is ineligible for employment at your operation for reasons noted under §745.907 of this title (relating to What are the consequences of Licensing designating me as a controlling person?) or §745.911 of this title (relating to In what other circumstances may I not employ someone because of his previous involvement with a residential child-care operation?).

§745.915. What happens after Licensing determines that someone is ineligible for employment at my operation?

(a) We will notify you if someone is ineligible for employment at your operation.

(b) If the person that we have prohibited you from employing believes that the results of the check are inaccurate, you may contact the local Licensing office that sent the notice to you to discuss the accuracy of the information.

(c) Unless we determine that the results of the check were inaccurate, you must remove this person from your operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER J. WAIVERS AND VARIANCES FOR MINIMUM STANDARDS

40 TAC §745.8307

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8307. *How does Licensing make the decision to grant or deny my waiver or variance request?*

We will not grant a waiver or variance if the minimum standard is required by statute. For all other waiver and variance requests, we consider the following factors when making the decision to grant or deny your request:

(1) - (4) (No change.)

(5) Your regulatory status (for example, whether you are on initial [~~provisional~~] status, evaluation, or probation);

(6) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

40 TAC §745.8419

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042(a).

§745.8419. *What will happen if I do not allow Licensing to inspect and/or investigate all areas of my operation?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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40 TAC §745.8419, §745.8425

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042(a).

§745.8419. *Can Licensing staff take copies of records from my operation?*

Yes. Our staff may take copies of records from your operation, including child records and personnel records.

§745.8425. *What will happen if I do not allow Licensing to inspect and/or investigate all areas of my operation?*

We may take remedial action as specified in Subchapter L of this chapter (relating to Remedial Actions), if you refuse, prevent, or delay our ability to conduct an inspection and/or investigation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. REMEDIAL ACTIONS

DIVISION 1. OVERVIEW OF REMEDIAL ACTIONS

40 TAC §745.8605, §745.8613

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8605. When can Licensing take remedial action against me?

We can impose a remedial action any time we find one of the following:

(1) - (11) (No change.)

(12) A failure to meet the terms and conditions of your evaluation or probation; [or]

(13) A failure to comply with minimum standards, rules, or laws at the end of the suspension period; [-]

(14) On or after September 1, 2005:

(A) We revoked your permit to operate a residential child-care operation; or

(B) You voluntarily closed your residential child-care operation or relinquished your permit after receiving notice of our intent to take adverse action against your permit or that we were taking adverse action against your permit;

(15) After we designate you as a controlling person, you apply for a permit:

(A) Before you waive or exhaust your due process rights regarding that designation; or

(B) Within five years after that designation is sustained;

(16) You are barred from operating a residential child-care operation in another state;

(17) You had a permit to operate a residential child-care operation in another state and that permit was revoked;

(18) You are applying for a permit to operate a residential child-care operation and:

(A) You fail to comply with public notice and hearing requirements as set forth in §745.277 of this title (relating to What will happen if I fail to comply with public notice and hearing requirements?); or

(B) The results of the public hearing meet one of the criteria set forth in §745.279 of this title (relating to How may the results of a public hearing affect my application for a permit or a request to amend my permit?);

(19) You operate a residential child-care operation, and that operation discharges or retaliates against an employee, client, resident, or other person because the person or someone on behalf of the person files a complaint, presents a grievance, or otherwise provides in good faith, information relating to the misuse of restraint or seclusion at the operation;

(20) A reason set forth in Human Resources Code, §42.078; or

(21) A failure to pay an administrative penalty under Human Resources Code, §42.078.

§745.8613. What rights do I have if I disagree with the decision of Licensing to impose a remedial action?

(a) The rights you have vary depending upon the type of action imposed against you. The chart in this subsection describes your rights for each type of remedial action:

Figure: 40 TAC §745.8613(a)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. ADVERSE ACTIONS

40 TAC §745.8661

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8661. What notice must I provide parents when the denial, suspension, or revocation of my permit is final?

If you are operating at the time you receive the final notice, you must notify the parents of each child that is enrolled of the denial, suspension or revocation of your permit. You must send notice of this action to the parents by certified mail within five days of the receipt of the notice of the denial, suspension, or revocation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. JUDICIAL ACTIONS

40 TAC §745.8683

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8683. *Will anyone be informed of the judicial action being taken against me?*

Yes, the fact that we are attempting to enforce a judicial action against you is available to the public. If you are a child day-care operation participating in the Child Care Management Program or the Child and Adult Care Food Program, we will inform the staff of those programs of any judicial action taken against you. If a child in your care is in the custody of the Department of Family and Protective Services (DFPS) [(PRS)], then we will also inform the Child Protective Services Division of DFPS [PRS], and, as appropriate, any other state and federal programs. We will tell these programs that we have obtained a temporary restraining order preventing you from operating, that we are attempting to extend the order or make it permanent, and whether you may care for children pending the final hearing in the matter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS

DIVISION 1. ADMINISTRATIVE REVIEWS

40 TAC §745.8807

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8807. *Who may request an administrative review?*

(a) The governing body, director, or designee of an operation may request an administrative review with respect to our decision or action concerning that operation's permit.

(b) A licensed administrator [The holder of a child-care administrator's license (CCAL)] may request a review of our decisions and actions concerning that administrator's license.

(c) A person we have designated as a perpetrator of child abuse or neglect may request an administrative review of that finding.

(d) A person that we designate as a controlling person of a residential child-care operation may request a review of that designation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. DUE PROCESS HEARINGS

40 TAC §§745.8835, 745.8837, 745.8841, 745.8843, 745.8855

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8835. *When can I request a due process hearing?*

You may request a [A] due process hearing in the following [is only available in five] situations:

(1) (No change.)

(2) When we are going to release the fact that you are [a person is] a perpetrator due to a Child Protective Services or Adult Protective Services finding of child abuse or neglect [, and the person is requesting to be at your operation on a regular or frequent basis];

(3) (No change.)

(4) When we are taking adverse action against your operation; [øø]

(5) When we designate you as a controlling person at a residential operation;

(6) When we impose an administrative penalty against you;
or

(7) [{5}] If you are a licensed administrator, when [When] we deny, revoke, [invalidate,] suspend, or refuse to renew your [child-care administrator's] license.

§745.8837. *Who can request the due process hearing?*

(a) - (b) (No change.)

(c) A licensed [When we are taking an action against a child-care] administrator [, only the holder of the license] can request a [the]

due process hearing when we suspend, revoke, or deny his administrator's license.

(d) A person that we designate as a controlling person of a residential child-care operation can request a review of that designation.

(e) The governing body, director, or the designee of the operation can request a due process hearing for an administrative penalty imposed against a permit holder.

§745.8841. Where do I send the written request for a due process hearing?

You must send your request for a due process hearing by certified or regular mail to our Docket Clerk in Legal Services. The exact mailing address is included in the notice informing you of your right to due process. You must also send a copy of your request to the Licensing staff that sent you the notice letter.

§745.8843. What happens after I make a request for a due process hearing?

(a) (No change.)

(b) After the State Office of Administrative Hearings assigns a docket number to your case;[;]

(1) We [we] will send you notice of the hearing, by regular and certified mail, to your last known address as shown by our records; or

(2) If the Docket Clerk has received written notice of representation from an attorney who will be representing you at the hearing, we will send the notice of the hearing to the attorney in a manner allowed under the rules referenced in §745.8845 of this title (relating to How is a due process hearing conducted?).

(c) (No change.)

(d) If you requested a hearing because we are going to release a Child Protective Services or Adult Protective Services finding that you abused or neglected a child, we may nullify your request if we decide not to release the finding to the operation. We may decide not to release the finding to the operation if we determine that you are no longer present at the operation. If we nullify your request for a hearing, you will retain your right to request a due process hearing in the event that we seek to release the finding in the future. We may not nullify your request for a hearing if:

(1) We released the finding to the operation as set forth in §745.733 of this title (relating to Will Licensing release a central registry finding on a designated perpetrator or sustained perpetrator to my operation?); or

(2) We are taking adverse action against your operation because of the finding.

§745.8855. Can I waive my right to a due process hearing?

(a) You will waive your right to a due process hearing by not requesting one [it] according to §745.8839 [and §745.8841] of this title (relating to How do I request a due process hearing? and §745.8841 of this title (relating to Where do I send the written request for a due process hearing?). If you waive your right to a due process hearing by not requesting one according to the rules, our decision and/or action will be effective on the date after your time period for requesting a due process hearing expires.

(b) If you want to expedite the decision and/or action, you may send us a written waiver of your right to the due process hearing before the 30-day timeframe has expired. Our decision or action will be effective on the date that we receive your written waiver.

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40 TAC §745.8841

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The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8841. Where do I send the written request for a due process hearing?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. OPERATIONS PENDING THE ADMINISTRATIVE REVIEW AND DUE PROCESS HEARING

40 TAC §745.8875

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC §42.042(a).

§745.8875. If Licensing takes adverse action against me, may I continue to operate pending the outcome of an administrative review and/or a due process hearing?

Whether you may operate pending the outcome of an administrative review and/or due process hearing depends upon the type of adverse action being taken against you.

(1) If we denied your permit, you may or may not operate depending upon the following conditions:

Figure: 40 TAC §745.8875(1)

(2) (No change.)

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.3401, 746.5101, 746.5401, and 746.5607, concerning must my child-care center have an annual sanitation inspection, must my child-care center have an annual fire inspection, must my child-care center be inspected for gas leaks, and what safety seat system must I use when I transport children, in its Minimum Standards for Child-Care Centers chapter. The amendments to §§746.3401, 746.5101, and 746.5401 change provisional permit to initial permit based on legislation passed by Senate Bill 6, 79th Legislature, Regular Session, 2005. The amendment to §746.5607 updates the rule for center-based operations in response to House Bill 183 of the 79th Legislature, Regular Session, 2005, and clarifies safety requirements for children younger than one year and more than 20 pounds.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the protection of children in out-of-home care will be enhanced and the quality of regulated child care will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff

time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-344, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER R. HEALTH PRACTICES

DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005.

§746.3401. Must my child-care center have an annual sanitation inspection?

(a) Your child-care center must have a sanitation inspection before we issue your initial [a provisional] permit and at least once every 12 months, unless your child-care center is in a public school building that a local or state sanitation official has approved for public school use.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602294

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 1. FIRE INSPECTION

40 TAC §746.5101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005.

§746.5101. Must my child-care center have an annual fire inspection?

(a) Your child-care center must have a fire inspection before we issue your initial ~~[provisional]~~ permit and at least once every 12 months, unless your child-care center is in a public school building that the state or local fire marshal has approved for public school use.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602295

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 438-3437



DIVISION 4. GAS AND PROPANE TANKS

40 TAC §746.5401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Senate Bill 6, 79th Legislature, Regular Session, 2005.

§746.5401. Must my child-care center be inspected for gas leaks?

Your child-care center must be inspected for gas leaks before we issue your initial ~~[provisional]~~ permit, and once every two years after your permit is issued, unless your child-care center is located in a public school building that the state or local fire marshal has approved for public school use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602296

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER X. TRANSPORTATION

40 TAC §746.5607

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements House Bill 183, 79th Legislature, Regular Session, 2005.

§746.5607. What safety seat system must I use when I transport children?

For all vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat, child safety seat, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturer's instructions before starting the vehicle, and during all times the vehicle is in motion. All child passenger safety seat systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions. The following restraint devices must be used when transporting children:

Figure: 40 TAC §746.5607

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602297

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 438-3437



CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

SUBCHAPTER X. TRANSPORTATION

40 TAC §747.5407

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.5407, concerning what safety

seat system must I use when I transport children, in its Minimum Standards for Child-Care Homes chapter. The purpose of the amendment to §747.5407 is to update the rule for home-based operations in response to House Bill 183 of the 79th Legislature, Regular Session, 2005, and to clarify safety requirements for children younger than one year and more than 20 pounds.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children in out-of-home care will be enhanced and the quality of regulated child care will improve. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-344, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Com-

missioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements House Bill 183, 79th Legislature, Regular Session, 2005.

§747.5407. *What safety seat system must I use when I transport children?*

For vehicles other than a bus with a GVWR of 10,000 pounds or more, you must secure each child in an infant safety seat, child safety seat, child booster seat, or a seat belt, as appropriate to the child's age, height, and weight according to manufacturers' instructions before starting the vehicle, and during all times the vehicle is in motion. All child passenger safety seat systems must meet federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration, and must be properly secured in the vehicle according to manufacturer's instructions. The following restraint devices must be used when transporting all children, including children related to you: Figure: 40 TAC §747.5407

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602298

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: June 11, 2006

For further information, please call: (512) 438-3437

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission withdraws the proposed amendment to §355.457 which appeared in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6857).

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602315

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission

Effective date: April 21, 2006

For further information, please call: (512) 424-6900



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.722

The Texas Health and Human Services Commission withdraws the proposed amendment to §355.722 which appeared in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6865).

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602316

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission

Effective date: April 21, 2006

For further information, please call: (512) 424-6900



TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.301

The Texas Lottery Commission withdraws the proposed amendment to §401.301 which appeared in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8247).

Filed with the Office of the Secretary of State on April 24, 2006.

TRD-200602304

Kimberly L. Kiplin
General Counsel

Texas Lottery Commission

Effective date: April 24, 2006

For further information, please call: (512) 344-5113



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §190.3

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Bond Review Board has been automatically withdrawn. The amended section as proposed appeared in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6927).

Filed with the Office of the Secretary of State on April 27, 2006.

TRD-200602356



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 18. MOTOR CARRIERS
SUBCHAPTER C. RECORDS AND
INSPECTIONS

43 TAC §18.32

The Texas Department of Transportation withdraws the proposed amendment to §18.32 which appeared in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8031).

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602400
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: April 28, 2006
For further information, please call: (512) 463-8683

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT SUBCHAPTER B. "TEXAS YES!" PROGRAM RULES

DIVISION 1. GENERAL RULES

4 TAC §29.21, §29.23

The Texas Department of Agriculture (the department) adopts amendments to Chapter 29, Subchapter B, Division 1, §29.21 and §29.23, concerning the department's "Texas Yes!" program rules, without changes to the proposal published in the March 24, 2006, issue of the *Texas Register*. The amendments are adopted to modify eligibility requirements for business and community members in the department's "Texas Yes!" Program, a promotional program designed to support and increase economic activity in rural Texas communities. The amendments to §29.21 delete the term "rural area" from the list of definitions, and revise the definitions for a "Texas Yes!" business member and a "Texas Yes!" community member to clarify those definitions to make them consistent with current practice, and delete the reference to rural areas or communities. The amendments to §29.23 provide revised eligibility requirements for community and business membership to make them consistent with the amendments to §29.21 and with current practice.

No comments were received on the proposal.

The amendments to §29.21 and §29.23 are adopted under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and the Code, §12.027, which authorizes the department to maintain an economic development program for rural areas within the state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602415

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: May 21, 2006

Proposal publication date: March 24, 2006

For further information, please call: (512) 463-4075

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 4. CURRENCY EXCHANGE

7 TAC §§4.7, 4.9, 4.12, 4.21

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), adopts the repeal of §4.7, concerning bond requirements and deposits in lieu of bond, §4.9, concerning misrepresentation of correction and enforcement actions for continuing and repeat violations, §4.12, concerning currency exchange license applications, notices to applicants, application processing times, abandoned filings, and appeals, and §4.21, concerning information to consumers on how to file a complaint. The repeal is adopted without changes to the proposal as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1544).

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Finance Code, Chapter 153 (Currency Exchange Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange business in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 4 consists of the administrative rules the commission previously adopted to implement the repealed Currency Exchange Act. The commission is adopting new regulations under the MSA which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Chapter 4. Ultimately, all Chapter 4 sections will be repealed.

The commission is repealing §§4.7, 4.9, 4.12, and 4.21 because these sections are unnecessary or obsolete. As explained in this preamble, the substance of these sections is incorporated into or rendered unnecessary by the MSA, or is included in new sections of Chapter 33 that the commission is simultaneously adopting in this issue of the *Texas Register*.

The substance of §4.12, which pertains generally to new license applications, is included in adopted new §33.13 and §33.15, and the substance of §4.21, relating to consumer complaints, is included in adopted new §33.51. Section 4.7, which establishes

the bond or other security requirements applicable to a license holder under the Currency Exchange Act, is unnecessary because the security requirements for money transmitters and currency exchangers are set out in the MSA. Section 4.9, concerning the correction of violations and administrative penalties for continuing and repeat violations, is unnecessary because Finance Code, §151.707, authorizes the banking commissioner to impose administrative penalties upon a person that fails to timely correct violations, engages in a pattern of violations, or willfully disregards the requirements of the law.

The commission received no comments regarding the proposal.

The repeal is adopted under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602375

Everette D. Jobe

Certifying Official

Finance Commission of Texas

Effective date: May 18, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 475-1300



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 29. SALE OF CHECKS ACT

7 TAC §§29.3, 29.4, 29.6 - 29.10, 29.12

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), adopts the repeal of §29.3, concerning application for new sale of checks license, §29.4, concerning violation of application processing times, §29.6, concerning net worth and bonding requirements for a license holder that conducts currency exchange, transportation or transmission transactions, §29.7, concerning exemption from licensing, §29.8, concerning license renewal, §29.9, concerning extension of time to file annual financial statement, §29.10, concerning correction of violations and imposition of administrative remedy, and §29.12, concerning notice to customers regarding complaints. The repeal is adopted without changes to the text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1546).

Prior to September 1, 2005, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act) and Finance Code, Chapter 153 (Currency Transmission Act). During the 79th Regular Session, the Texas Legislature enacted the Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1), effective September 1, 2005. The Money Services Act (MSA), codified as Finance Code, Title 3, Subtitle E, Chapter 151, consolidates the regulation of persons engaged in the money transmission and currency exchange businesses in Texas into one statute and repeals the Sale of Checks and Currency Exchange Acts.

Chapter 29 consists of the administrative rules the commission previously adopted to implement the repealed Sale of Checks Act. The commission is adopting new regulations under the MSA which are located in Texas Administrative Code, Title 7, Chapter 33 (Money Services Businesses). As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Chapter 29. Ultimately, all Chapter 29 sections will be repealed.

The commission is repealing §§29.3, 29.4, 29.6 - 29.10, and 29.12 because these sections are unnecessary or obsolete. As explained in this preamble, the substance of these sections is incorporated into or rendered unnecessary by the MSA, or is included in the new sections of Chapter 33 that the commission is simultaneously adopting in this issue of the *Texas Register*.

The substance of §§29.3, 29.4, 29.8, 29.9, and 29.12 is included in new Chapter 33 sections. The requirements of §29.3 and §29.4, which pertain generally to new license applications, are included in adopted new §33.13 and §33.15. The substance of §29.8 and §29.9, which concern license renewals and extensions of time for filing annual statements, is included in new §33.21 (and is also addressed in Finance Code, 151.207). The substance of §29.12, which specifies how license holders must tell their customers how to file complaints, is included in adopted new §33.51.

The substance of §§29.6, 29.7, and 29.10 is incorporated into or rendered unnecessary by the MSA. Section 29.6, which establishes the net worth and bond requirements for a license holder under the Sale of Checks Act that conducts currency-based transactions generally regulated under the Currency Exchange Act, is unnecessary. All money transmission is now regulated under the MSA, and the security requirements for both money transmitters and currency exchangers are set out in Finance Code, §151.308 and §151.506, respectively. The exemptions from licensing recognized in §29.7 are now set out in Finance Code, §151.103, and §33.3, which establishes an exclusion for agents of certain financial institutions. Finally, §29.10, concerning the correction of violations and administrative penalties, is rendered unnecessary by Finance Code, §151.707. Section 151.707 authorizes the banking commissioner to impose administrative penalties upon a person who fails to timely correct violations, engages in a pattern of violations, or willfully disregards the requirements of the law.

The commission received no comments regarding the proposal.

The repeal is adopted under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602376

Everette D. Jobe

Certifying Official

Texas Department of Banking

Effective date: May 18, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 475-1300



CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.13, 33.15, 33.21, 33.51

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), adopts new §33.13, concerning new license applications, §33.15, concerning violation of new license application processing times, §33.21, concerning license renewals, and §33.51, concerning providing information to customers about how to file a complaint. The new sections are adopted without changes to the text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1547).

The new sections are adopted under the recently enacted Money Services Act (Act of May 26, 2005, 79th Leg., R.S., H.B. 2218, §1) (MSA), which took effect September 1, 2005, and is codified as Finance Code, Title 3, Subtitle E, Chapter 151. The MSA regulates persons that engage in money services businesses in Texas, specifically the money transmission and the currency exchange businesses. Prior to the enactment of the MSA, Texas law regulated money services businesses under Finance Code, Chapter 152 (Sale of Checks Act), and Chapter 153 (Currency Exchange Act). The MSA consolidates the regulation of these businesses into one statute and repeals the Sale of Checks and Currency Exchange Acts.

The commission is in the process of adopting new regulations to implement the MSA. As the commission adopts new Chapter 33 sections, the commission is repealing existing sections of Texas Administrative Code, Title 7, Chapter 29 (Sale of Checks Act) and Chapter 4 (Currency Exchange), which sections were previously adopted under the repealed Sale of Checks and Currency Exchange Acts. Ultimately, all sections of Chapter 29 and Chapter 4 will be repealed.

As explained in this preamble, the adopted new sections replace Chapter 29 and Chapter 4 sections that the commission is repealing in this issue of the *Texas Register*. Adopted new §§33.13, 33.15 and 33.51 are substantively similar to the repealed sections but conform to the provisions of the MSA. Adopted new §33.21 reflects and clarifies the requirements of the MSA with respect to license renewals.

Adopted new §33.13 sets out the requirements an applicant for a new license under the MSA must satisfy and procedures for accepting, evaluating, and granting or denying an application. Adopted new §33.15 establishes the process by which a new license applicant may complain to the banking commissioner if the department fails to comply with the application processing times specified in adopted new §33.13(e) or (h). These new sections replace repealed §29.3, §29.4 and §4.12.

Adopted new §33.21, which addresses license renewals, replaces repealed §29.8 and §29.9, both of which are rendered obsolete by the MSA. The adopted new section expands upon and reflects the requirements of Finance Code, §151.207, regarding the renewal of money transmission and currency exchange licenses. Valid licenses currently held under the MSA, either new licenses issued under the Act or licenses continued under the Act's transition provisions, expire on August 15, 2006, and must be renewed in accordance with the MSA. The adopted new section specifies what a license holder must file to renew its license and applicable statutory deadlines. The new section also establishes the procedure by which a license holder may request an extension of time to file its renewal report or pay its

renewal fee and explains what is required to demonstrate the "good cause" required to justify the extension.

Adopted new §33.51 specifies the manner in which a license holder must provide information to its customers about how to file a complaint with the department. The adopted new section is substantively similar to the repealed sections it replaces, §29.12 and §4.21. However, the notice language in the adopted new section differs slightly from the language in repealed §29.12 and §4.21. The new notice provides that a customer with a complaint about a license holder's money transmission or currency exchange activity should contact the department if the complaint remains unresolved after the customer has complained to the license holder. The new language is intended to benefit license holders and customers by encouraging direct communication between the two and reduce unnecessary calls to the department.

Adopted new §33.51 has an effective date of July 1, 2006, the date by which the MSA requires license holders to file their renewal reports. However, §33.51 permits a license holder to use the notice set out in the section or a substantially conforming notice. The department will consider notices license holders currently use under repealed §29.12 and §4.21 to be substantially conforming for purposes of compliance with the adopted section. However, the department encourages and expects license holders to transition to the new notice language within a reasonable period of time.

The commission received no comments regarding the proposal.

The new sections are adopted under Finance Code, §151.101, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151. The new sections are also adopted under Finance Code, §151.101, which authorizes the commission to prescribe time periods for the processing of new license applications, and Finance Code, §11.307, which directs the commission to adopt rules regarding consumer complaint notices.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602378

Everette D. Jobe

Certifying Official

Texas Department of Banking

Effective date: May 18, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 475-1300



PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 77. LOANS, INVESTMENTS, SAVINGS, AND DEPOSITS

SUBCHAPTER B. SAVINGS AND DEPOSITS

7 TAC §77.116

The Finance Commission of Texas ("Finance Commission") adopts new 7 TAC §77.116 Pledging of Assets to Secure Deposits of Certain Public Purpose Entities. The purpose of the new section is to implement amendments to *Finance Code* §93.001(c)(5) to define member-owned utilities (such as electric cooperatives and water supply corporations) and certain economic development corporations as "entities that serve a public purpose" for purposes of the amended statute. The adoption of the rule is without change to the proposed text as published in the March 10, 2006 issue of the *Texas Register* (31 TexReg 1551).

Prior to September 1, 2005, *Finance Code* §93.001(c)(5) permitted a state chartered savings bank to pledge its assets to secure the deposits of any state or of a political corporation or political subdivision of any state. This provision allowed a state savings bank to pledge savings bank assets to secure the deposits of public funds which were in excess of the limits on deposit account insurance provided by the Federal Deposit Insurance Corporation. The authority to pledge assets to secure the uninsured portion of large deposits did not extend to non-profit non-governmental entities which provide necessary public services such as utility services or economic development assistance. H.B. 955 as passed by the 79th Texas Legislature amended *Finance Code* §93.001(c)(5) to grant state chartered savings banks the authority to pledge savings bank assets to secure the deposits of any "other entity that serves a public purpose according to rules adopted by the finance commission." This new rule establishes the definition of those entities that the Finance Commission deems to "serve a public purpose" as contemplated by the amended statute. The rule defines these entities to include electrical cooperatives, telephone cooperatives, nonprofit water supply and sewer corporations, economic development corporations and any not for profit entity which the Savings and Mortgage Lending Commissioner determines provides utility services or economic development services similar to those entities specifically identified in the rule.

The Finance Commission received no comments on the proposed new rule.

The rule is adopted pursuant to *Finance Code* Section 11.302(a) which authorizes the Finance Commission to adopt rules applicable to savings associations and savings banks. The Finance Commission interprets this as authorizing adoption of rules to implement amendments to *Finance Code* Chapter 93 relating to the authorized powers of state savings banks. The section of the *Finance Code* affected by the rule is *Finance Code* §93.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602413

John Fleming

General Counsel

Texas Department of Savings and Mortgage Lending

Effective date: May 21, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 475-1353



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.9

The Texas Department of Housing and Community Affairs (the Department) adopts the proposed amendment of §1.9(f), concerning the qualified contract request processing fee, as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2344). There were no changes, and therefore, the rule will not be republished.

This section is adopted in order to correct the fee charged for a qualified contract request.

No public comment was received.

The amendment is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2006.

TRD-200602348

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 17, 2006

Proposal publication date: March 24, 2006

For further information, please call: (512) 475-4595



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS

FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.77

The Texas State Library and Archives Commission adopts amended rule, 13 TAC §1.77, without changes to the text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1398). This section addresses minimum standards for accreditation in the State Library System. One comment was received during the comment period.

One comment was received. An officer of the Friends of Cedar Creek Lake Public Library recommended reconsideration of the proposed change from \$10.00 to \$13.50 per capita. He said he supported high standards; however, he believed it could do more harm than help to small public libraries without a lot of funds. His local library struggles continually to meet state requirements because of limited funds, yet does an absolutely fabulous job of

serving the community. The proposed change would make that considerably more difficult. The agency understands his concern, but believes that the impact the rule would have is being misinterpreted. The proposed change from \$10.00 to \$13.50 per capita is not a new level that all libraries must meet either to attain or remain accredited in the State Library System. This amendment would only set a higher level of minimum per capita support that allows a library to be exempt from the rule's requirement that "at least half of the annual local operating expenditures required to meet the minimum level of per capita support for accreditation must be from local government sources." The minimum level of support for accreditation that a library must report is established in 13 TAC §1.81, and this remains the same. This information was sent to the respondent.

This amendment is adopted under the authority of Government Code §441.127, that provides the commission authority to set accreditation standards for public libraries.

The proposed amended section affects the Government Code §441.127.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602405

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: May 18, 2006

Proposal publication date: March 3, 2006

For further information, please call: (512) 463-5459



CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.1, §8.5

The Texas State Library and Archives Commission adopts with changes amendments to 13 TAC §8.1 and 13 TAC §8.5 regarding the TexShare Library Consortium, posted in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1399). The revisions establish criteria for public school libraries to participate in group purchasing agreements provided by the TexShare Consortium as specified in SB 483, enacted by the 79th Legislature. The criteria ensure that the resources of qualifying public school libraries are adequate for participation in these group purchasing programs, and that their participation will not have the effect of reducing services to current members. A complete set of guidelines by which a school may examine the library program and begin to work toward results that are consistent with educational objectives are found in the school library standards, 13 TAC §4.1.

No comments were received. Staff recommended that the use of the phrase "public school library" be expanded in order to clarify that "public school library" is inclusive of libraries at both the district and campus levels. To accomplish this, the phrase "or public school campus" has been added in §8.1(9) and §8.5(c).

The amendments are adopted under Government Code §441.225(b), which authorizes the commission to adopt rules to govern the operation of the consortium.

The amended section affects Government Code, §441.221 through §441.230.

§8.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Institution of higher education--An institution of higher education as defined by Education Code, §61.003, and a private or independent institution of higher education as defined by Education Code, §61.003.

(2) Annual Report--A report submitted to the Commission each year on the member institution of higher education's participation in TexShare programs, the member library of clinical medicine's participation in TexShare programs, or in fulfillment of a public library's system membership requirements.

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as those services set forth in §1.81(4)(C) and (D) of this title.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine--a minimum of 10,000 library resources in print and in electronic format, comprised of books, journal titles, technical reports, and databases on clinical medicine and the history of medicine.

(8) Public school--any school accredited by under Education Code Subchapter D Accreditation Status (§§39.071-39.076).

(9) Public school library--an organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--a public school staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031-21.058).

(11) Certified staff member--a public school staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031-21.058).

(12) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and the Internet community.

§8.5. Programs.

(a) The programs of the consortium shall include activities designed to facilitate library resource sharing. Such activities may include:

- (1) providing electronic networks, shared databases, reciprocal borrowing, delivery services, and other infrastructure necessary to enable the libraries in the consortium to share resources;
- (2) negotiating and executing statewide contracts for information products and services;
- (3) coordinating library planning, research and development; or
- (4) training library personnel.

(b) Programs of the consortium are established and administered for the benefit of consortium members. Consortium members may sometimes enter into formal or informal agreements with non-member entities. Under these agreements, consortium members may not provide systematic access to consortium services to non-member entities. This provision should not be construed in such a way as to limit a member institution's ability to provide on-site access to TexShare databases to members of the public.

(c) Public school libraries may participate in group purchasing agreements provided by the consortium if such libraries are managed by or report to a certified school librarian or other certified staff member in the public school or public school campus.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602406

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

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Proposal publication date: March 3, 2006

For further information, please call: (512) 463-5459



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER K. REPORTS

19 TAC §17.101

The Texas Higher Education Coordinating Board adopts amendments to §17.101, concerning Institutional Reports, without changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1403).

Specifically, these amendments increase the limits regarding submission of projects for an institution's Facilities Development Plan (MP1) to match new standards set by the Bond Review Board.

The following comment was received regarding the amendments:

Comment. One comment was received from The University of Texas System Office of Facilities Planning and Construction (OFPC) asking the Board to consider raising the repair and renovation reporting threshold in the capital expenditure plan (MP1) from the proposed \$1 million to \$2 million to allow consistency with UT system's currently collected and maintained database.

Response. Article 9, §11.02 (d) of Senate Bill 1 specifically calls for the threshold for repair and renovations of buildings and other facilities estimated to exceed \$1 million in the aggregate for a single state agency or institution of higher education. No changes were made as a result of this comment.

The amendments are adopted under the Texas Education Code, §61.027 and §61.0572.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602326

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 16, 2006

Proposal publication date: March 3, 2006

For further information, please call: (512) 427-6114



CHAPTER 21. STUDENT SERVICES

SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.56, 21.61, 21.62

The Texas Higher Education Coordinating Board adopts amendments to §§21.56, 21.61, and 21.62, concerning the Hinson-Hazlewood College Student Loan Program, without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1158).

Specifically, the amendment to §21.56 (Requirements of Cosigner/Accommodation Party) adds the requirement that a cosigner of a loan must be a citizen or permanent resident of the United States and must reside in the United States or a territory of the United States. The amendment to §21.61 (Disbursements to Students) removes the outdated and unnecessary requirement that a spouse's signature must be on the promissory note of a married borrower. The amendment to §21.62 (Repayment of Loans) clarifies the way payments are to be applied, as stated on the loan promissory note.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §52.01, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §52.01 and §§52.31 - 52.40.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602327

Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 16, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 427-6114



SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §§21.401, 21.402, 21.404, 21.406

The Texas Higher Education Coordinating Board adopts amendments to §§21.401, 21.402, 21.404, and 21.406, concerning the Texas College Work-Study Program, without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1159).

Specifically, the amendments to §§21.401, 21.402, and 21.404 broaden the scope of the mentorship program to include both tutors and persons who are employed to help students on academic probation adjust to college life. The amendment to §21.401 deletes the word "academic," as mentoring is not restricted to academic tutoring. The amendment to §21.402 changes the definition of "mentor" to include more than academic tutoring. The amendment to §21.404 clarifies that students employed in a mentorship program must meet the institution's standards for employment as a mentor rather than a tutor. The amendment to §21.406 states that institutions eligible to receive federal Title V funds are also exempted from the requirement to provide 25 percent of an employed student's wages.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.071 - 56.079.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 26, 2006.

TRD-200602328
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §§22.304, 22.306, 22.307

The Texas Higher Education Coordinating Board adopts amendments to §§22.304, 22.306 and 22.307, concerning the Exemption Program for Clinical Preceptors and their Children, without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1160).

Specifically, the amendment to §22.304 clarifies that the value of the exemption for all recipients is tuition, up to \$500 per term. The amendments to §22.306 clarify that the eligibility restrictions apply only to the children of preceptors and add the restriction given in Texas Education Code §54.222(c) that they must be enrolled as undergraduate students. The amendment to §22.307 clarifies that limitations on eligibility, as described in Texas Education Code §54.222(e), apply only to the children of preceptors.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §54.222(g), which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.222.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200602329
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.16

The Board of Nurse Examiners adopts amendments with changes to 22 TAC §217.16 pertaining to Licensure, Peer Assistance and Practice. Section 217.16 specifically addresses the minor incident rule contained in Texas Occupations Code §301.419 and addressed in §301.401. The proposed rule was published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 965). Editorial changes were implemented in §217.16(d)(2)(A) and (C) by changing the word "behavior" to "practice" to make the language consistent with other subsections of the rule.

The Board believes that the adopted revision to the Minor Incident Rule, 22 TAC §217.16, will serve to clarify what constitutes a "minor incident" in nursing practice, as well as incidents that the Board would not consider to be a minor incident in any circumstance. In alignment with national patient safety initiatives, the adopted rule encourages a culture of non-punitive reporting and remediation of the nurse as initial corrective actions.

Four comments were received in response to the publication of the proposed rule language. Two comments were received from individuals with suggested language changes, and comments in support of the proposed rule revisions were received from Texas Nurses Association and an individual.

Comment: One comment expressed concern for a shift away from the individual nurse's accountability to the emphasis placed on the infrastructure of the "system." The accountability of the system, nursing management, thus the chain of command will need to be explicit. She recommends a "greater emphasis on the authority administrative/managerial structure and explicit non-compliance issues on CNO, manager and chain of command."

Further concerns were expressed that, though she feels this clarification is needed, this may add to the already existing workload for nursing management. The resulting effect of increasing the reporting threshold from 3 to 5 minor incidents in a 12 month time period may be a delay in the necessary remediation.

Response: While the Board agrees with the comment in part that a greater emphasis should be given to the nursing manager's and nursing supervisor's role in the evaluation, tracking, documenting and remediation of the nurse involving a minor incident, the Board believes additional consensus building is needed to determine the most appropriate way to express the responsibility of the CNO and nurse manager. The Board agrees that the nurse manager's responsibility under current §217.12(2) should be emphasized in the Interpretive Guideline for §217.16.

The Board appreciates the concern for possible delay in remediation of a nurse should a nurse manager remain focused merely on numbers (5 vs. 3) of minor incidents rather than the "bigger picture" of identifying remediation needs at any point in the nurse's practice. The Board does not agree that this would impose an increased workload on nurse managers, who have been and continue to be required to take appropriate action to assure client safety in making assignments to nurses for whom the nurse manager is administratively responsible (§217.11(1)(B) and (S)).

Comment: To make the peer review process fair and equitable in §217.16(g)(2), the members of the informal workgroup should not be members of the peer review committee. This assures an impartial group reviewing the incident.

Response: The Board appreciates this recommendation; however, requiring the informal workgroup to be a separate entity from the peer review committee may not always be possible, particularly in smaller institutions and facilities. There may not be enough employees to staff the informal workgroup differently from the peer review committee. In addition, it may be beneficial in certain instances for the informal workgroup to consist of nurses from a specialty practice area who have integral working knowledge of the nursing standards specific to the practice setting. Conversely, there may be instances where utilizing nurses from the same specialty unit could jeopardize the impartiality of the peer review process, rather than enhancing it.

In short, the Board believes adding this requirement to the rule would make it unnecessarily prescriptive and might be detrimental in some settings. Therefore, the Board believes the membership of the informal workgroup and the peer review committee is an issue that is best left up to the individual policies and procedures concerning minor incidents for each facility. The Board does believe additional explanation of the membership options of the informal workgroup in the Interpretive Guideline for §217.16 would provide clarification for nurse managers and employers.

The amendments are adopted pursuant to the authority of Texas Occupations Code, §301.151 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

§217.16. Minor Incidents.

(a) **Purpose.** The Board believes protection of the public is not enhanced by the reporting of every minor incident that may be a violation of the Texas Nursing Practice Act. This is particularly true when there are mechanisms in place in the nurse's practice setting to identify nursing errors, detect patterns of practice, and take corrective action to remediate deficits in a nurse's judgment, knowledge, training, or skill. This rule is intended to clarify what constitutes a minor incident and when a minor incident need not be reported to the board.

(b) **Definition and Scope.** A "minor incident" is defined by Texas Occupations Code §301.419(a) as "conduct that does not indicate that the continuing practice of nursing by an affected nurse poses a risk of harm to the client or other person."

(c) **Exclusions.** The following conduct shall not be deemed a minor incident under any circumstance:

(1) An error that contributed to a patient's death or serious harm.

(2) Criminal Conduct defined in Texas Occupations Code §301.4535.

(3) A serious violation of the board's Unprofessional Conduct Rule (22 TAC §217.12) involving intentional or unethical conduct such as fraud, theft, patient abuse or patient exploitation.

(d) **Criteria for Determining if Minor Incident is Board-Reportable.**

(1) A nurse involved in a minor incident need not be reported to the Board unless the conduct:

(A) creates a significant risk of physical, emotional or financial harm to the client;

(B) indicates the nurse lacks a conscientious approach to or accountability for his/her practice;

(C) indicates the nurse lacks the knowledge and competencies to make appropriate clinical judgments and such knowledge and competencies cannot be easily remediated; or

(D) indicates a pattern of multiple minor incidents demonstrating that the nurse's continued practice would pose a risk of harm to clients or others.

(2) **Evaluation of Multiple Incidents.**

(A) **Evaluation of Conduct.** In evaluating whether multiple incidents constitute grounds for reporting it is the responsibility of the nurse manager or supervisor or peer review committee to determine if the minor incidents indicate a pattern of practice that demonstrates the nurse's continued practice poses a risk and should be reported.

(B) **Evaluation of Multiple Incidents.** In practice settings with nursing peer review, the nurse shall be reported to peer review if a nurse commits five minor incidents within a 12-month period. In practice settings with no nursing peer review, the nurse who commits five minor incidents within a 12 month period shall be reported to the Board.

(C) **Nurse Manager and Nurse Supervisor Responsibilities.** Regardless of the time frame or number of minor incidents, if a nurse manager or supervisor believes the minor incidents indicate a

pattern of practice that poses a risk of harm, the nurse should be reported to the Board or Peer Review Committee.

(e) **Special Considerations in Evaluating Incidents.** In evaluating whether a nurse's conduct constitutes a minor incident or should be reported to the Board, the following should be considered:

(1) If an incident is primarily the result of factors beyond the nurse's control and addressing those factors is more likely to prevent the incident from reoccurring, a presumption should exist that the incident is a non-reportable minor incident.

(2) Multiple factors may contribute to medication errors. For the purposes of this rule, a medication error should be evaluated to determine whether the error resulted from failure of the nurse to exercise proper clinical judgment or if there were other extraneous factors that were the primary cause of the error. Board Position Statement 15.17 provides guidelines for evaluating medication errors.

(f) **Documentation of Minor Incidents.** A minor incident should be documented as follows:

(1) a report shall be prepared and maintained for 12 months that contains a complete description of the incident, patient record number, witnesses, nurse involved and the action taken to correct or remedy the problem;

(2) if a medication error is attributable or assigned to the nurse as a minor incident, the record of that incident should indicate why the error is being attributed or assigned to the nurse.

(g) **Nursing Peer Review Committee.**

(1) A peer review committee receiving a report involving a minor incident or incidents shall review the incident(s) and other conduct of the nurse during the previous 12 months to determine if the nurse's continuing to practice poses a risk of harm to clients or other persons and whether remediation would be reasonably expected to adequately mitigate such risk if it exists. The committee shall consider the special considerations set out in subsection (d) of this section.

(2) Regardless of the number of incidents, the facility may choose to initiate an informal review process utilizing a workgroup of the nursing peer review committee. Peer review of minor incidents under this Rule may be conducted by a special workgroup of the nursing peer review committee. The workgroup may conduct its review using an informal process as long as the nurse has opportunity to meet with the workgroup and provided the nurse is given an opportunity to be peer reviewed in accordance with §217.19 of this title (relating to Incident-Based Nursing Peer Review) prior to any report being made to the Board.

(3) If the peer review committee determines either that the nurse's continuing to practice does not pose a risk of harm to clients or other persons or that remediation could reasonably be expected to adequately mitigate any such risk, the committee need not report the nurse to the Board provided any remediation is successfully completed.

(h) **A Right to Report.** Nurses and other persons are encouraged not to report minor incidents to the Board unless required to do so by this rule, but nothing in this rule is intended to prevent reporting of a potential violation directly to the Board.

(i) **Bad Faith Determination.** Intentionally misclassifying an incident in bad faith to avoid reporting may result in violation of the mandatory reporting statute.

(j) **Chief Nursing Officer's Responsibility.** The chief nursing officer shall be responsible for taking reasonable steps to assure that minor incidents are handled in compliance with this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2006.

TRD-200602355

Katherine Thomas

Executive Director

Board of Nurse Examiners

Effective date: May 17, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 305-6823



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH SUBCHAPTER N. HISTORICALLY UNDERUTILIZED BUSINESSES

25 TAC §1.171

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §1.171, concerning procedures and policies of the Department of State Health Services relating to historically underutilized businesses (HUBs), without changes to the proposed text as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 265) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The amendment is necessary to ensure that the rule is current and reflects the recent consolidation of health and human service agencies.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.171 has been reviewed, and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is required by the Government Code, §2161.003.

SECTION-BY-SECTION SUMMARY

The agency's name is changed from the "Texas Department of Health" to the "Department of State Health Services." The reference to the rules of the General Services Commission is updated to reflect the current name, the "Texas Building and Procurement Commission (TBPC)." Finally, TBPC adopted one additional rule, and the Texas Administrative Code (TAC) reference is changed to include all rules currently adopted by TBPC regarding the HUB program.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602409

Cathy Campbell
General Counsel

Department of State Health Services

Effective date: May 21, 2006

Proposal publication date: January 13, 2006

For further information, please call: (512) 458-7111, x6972



CHAPTER 159. TERTIARY MEDICAL CARE

25 TAC §159.1

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §159.1, concerning the reimbursement of Tertiary Care Facilities and Level IV Trauma Facilities, without changes to the proposal as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 266) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The repeal is necessary because the reimbursement program was not funded by the Texas Legislature for fiscal years 2004-2005 or fiscal years 2006-2007. Repeal of this section will align the department's rules more accurately with the General Appropriations Act (GAA).

SECTION-BY-SECTION SUMMARY

The adoption of §159.1 aligns the department's rules with the GAA now that there is no funding for the program. By not funding that program, it can no longer provide reimbursement and a rule governing that program is unnecessary.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeal is authorized by the Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602412

Cathy Campbell
General Counsel

Department of State Health Services

Effective date: May 21, 2006

Proposal publication date: January 13, 2006

For further information, please call: (512) 458-7111, x6972



CHAPTER 460. MISCELLANEOUS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§460.201 - 460.204 and 460.211, concerning procedures and policies of the Texas Health Care Information Council (council), without changes to the proposed text as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 273) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The council was abolished by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.26. All rules of the council were transferred to the department under House Bill 2292, §1.19 on September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with the recent consolidation of health and human service agencies. The department has other rules relating to donors and donations at Title 25, Texas Administrative Code (TAC), §§1.221 - 1.228, and to historically underutilized businesses (HUBs) at Title 25, TAC, §1.171. The department also has policies and procedures on donations and HUBs. These sections are not necessary because the issues are addressed in these other rules, policies, and procedures.

SECTION-BY-SECTION SUMMARY

The repeal of §§460.201 - 460.204 and 460.211 is necessary to prevent duplication and redundancy between the rules transferred from the council and other rules, policies, and procedures of the department on these subjects.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER D. RULES AND PROCEDURES FOR COUNCIL OFFICERS, COUNCIL EMPLOYEES, DONORS AND DONATIONS

25 TAC §§460.201 - 460.204

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602410

Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111, x6972



SUBCHAPTER E. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

25 TAC §460.211

STATUTORY AUTHORITY

The repeal is authorized by Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Department of State Health Services

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §§114.3, 114.150, 114.151, and 114.153 - 114.157 *without changes* as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7824).

The commission will submit to the United States Environmental Protection Agency (EPA) revisions to the state implementation plan (SIP) addressing the repeal of these rules.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act Amendments of 1990 (FCAA), §182(c)(4), required states to either adopt the Federal Clean Fuel Fleet (FCFF) Program outlined in FCAA, §246, or implement a program that demonstrates long-term reductions in ozone-producing and toxic air emissions equal to those achieved under the FCFF Program.

The FCFF Program requires federal, state, and local governments, and private fleets to purchase low emission vehicles (LEVs) in areas classified by the EPA as being in serious, severe, or extreme nonattainment of the national ambient air quality standards (NAAQS) for ozone and carbon monoxide (CO). The federal program mandates increasing percentages of LEV purchases by the affected fleets in the covered nonattainment areas in vehicle model years 1999, 2000, and 2001.

The State of Texas, in a committal SIP revision submitted to the EPA on November 15, 1992, opted out of the FCFF Program in order to implement a fleet emission control program designed by the state.

In 1994, the commission submitted the state's opt-out program in a SIP revision to the EPA and adopted rules to implement the Texas Alternative Fuel Fleet Program as a substitute to the FCFF Program in the areas of Texas classified by EPA as being in serious, severe, or extreme nonattainment of the NAAQS for ozone or CO.

In 1995, the 74th Legislature modified the state's alternative fuels program through the passage of Senate Bill (SB) 200. The legislature facilitated fuel neutrality through the incorporation of the federal LEV standards for certain affected fleets regardless of fuel type. The legislation required the commission to adopt regulations to implement the program in all ozone nonattainment areas.

In response, the commission adopted regulations to implement the modified program and developed a revision to the SIP outlining the state's substitute program to the FCFF Program. However, the 75th Legislature met in 1997 and removed the commission's authority to require the program in moderate nonattainment areas through passage of SB 681. This new legislation limited the commission's authority to the serious and above ozone nonattainment areas. In addition, SB 681 modified the state's alternative fuels program. The legislature retained the basic requirement of LEV purchases, but modified the implementation schedule, added an additional exception from the program, and altered the grandfathering provisions of the statute. This new legislation required the commission to adopt regulations to implement the program.

On December 16, 1997, the EPA finalized federal regulations for the National Low Emission Vehicle (NLEV) Program. The

NLEV Program was developed to allow manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that were more stringent than the EPA could mandate prior to 2004. The EPA made a final determination on implementation of NLEV on March 2, 1998. With the NLEV Program successfully implemented nationally, the commission was able to use emission reductions achieved through the NLEV Program to offset any shortfall in emission reductions resulting from the state's substitute for the FCFF Program.

On July 29, 1998, the commission adopted regulations and a revision of the Texas Clean Fleet (TCF) SIP to set forth the LEV requirements for mass transit fleets in each of the serious and above nonattainment areas, and for local government and private fleets operated primarily within the serious and above nonattainment areas. These rules satisfied the state requirements to adopt rules to implement SB 681.

On February 10, 2000, the EPA finalized federal regulations for the Tier II emission standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, vans, and light-duty trucks that were 77% - 95% cleaner than the current emission standards. The new emission standards set a corporate average standard for nitrogen oxides of 0.07 grams per mile for all classes of passenger vehicles beginning in 2004. This includes all light-duty trucks, as well as the largest SUVs. Vehicles weighing less than 6,000 pounds will be phased-in to this standard between 2004 and 2007. Later that same year on October 6, 2000, the EPA finalized federal regulations for emission standards for model year 2004 and newer heavy-duty diesel engines (HDDE) and vehicles that were equivalent to the ultra low emission vehicle (ULEV) standards under the FCFF Program.

In June 2005, the state statutes requiring the commission to establish and implement LEV requirements for mass transit fleets and for private and local government fleets (i.e., the TCF Program) as codified in Texas Health and Safety Code (THSC), Chapter 382, Subchapter F, were repealed by SB 1032 by the 79th Legislature, 2005. The commission's rules in §§114.3, 114.150, 114.151, and 114.153 - 114.157 implementing these statutes required mass transit authorities, private companies, and local government fleets in the Houston-Galveston-Brazoria (HGB), Dallas-Fort Worth (DFW), and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases were vehicles that had been certified by the EPA to the federal LEV standards.

The commission recommended that the Texas Legislature repeal these enabling statutes because the LEV standards have been superseded by the cleaner federal Tier II emission standards that were promulgated in February 2000 and the federal 2004 heavy-duty engine emission standards that were promulgated in October 2000. As a result of these new emission standards, requiring fleets to comply with a mandatory LEV percent-of-purchase requirement is no longer an effective method to reduce emissions from fleet vehicles. In addition, the continued implementation of a mandatory vehicle purchase program is diminished due to programs such as the Texas Emissions Reduction Plan (TERP), the commission's Emissions Reduction Incentive Grants Program, Clean Cities, Congestion Mitigation and Air Quality (CMAQ) Improvement Program, and EPA fund programs that provide financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs.

The adopted repeal of these rules has no impact on the emissions from fleets since new fleet vehicles are being certified by the EPA to either the federal Tier II emission standards or the federal 2004 heavy-duty engine emission standards, both of which are cleaner than the federal LEV standards currently required under these rules. In addition, the repeal removes an administrative burden since the affected fleets will no longer be required to submit biennial fleet compliance reports to the commission.

In conjunction with the adopted repeal of these rules, the commission has revised the SIP to remove the TCF Program as an ozone control strategy since the federal emission standards for model year 2004 and later light-duty and heavy-duty motor vehicles are more stringent than those required by the FCFF Program as outlined in the FCAA. The federal emission standards for HDDE in model years 2004 - 2006 are equivalent to the heavy-duty ULEV standards under the FCFF Program and the federal standards for HDDE in model years 2007 and later are approximately 90% cleaner than ULEV. The emission reductions achieved by the Tier II and HDDE standards far surpass the emission reductions that would be expected from implementation of the TCF Program in any of the state's ozone nonattainment areas.

SECTION BY SECTION DISCUSSION

This rulemaking action repeals §114.3 in Subchapter A and §§114.150, 114.151, and 114.153 - 114.157, Subchapter E, in its entirety, in accordance with the directive indicated by SB 1032 by the 79th Legislature.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal eliminates commission rules that require mass transit authorities, private companies, and local government fleets in the HGB, DFW, and El Paso ozone nonattainment areas to ensure that a specified percentage of their new fleet vehicle purchases are vehicles certified by the EPA as LEVs under the federal LEV standards. The adopted action is a rules repeal, and it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The TCF Program regulated a sector of the economy. Repeal of the program is unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Under TERP, the commission's Emissions Reduction Incentive Grants Program provides financial incentives to private, local government (including school districts), and mass transit fleets to voluntarily purchase the cleanest vehicles possible that meet their operational needs. This means that the repeal is also unlikely to adversely affect in a material way the environment or public health and safety. Because the repeal does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the adopted repeal does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals do not constitute a major environmental rule, a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for the repeal. The adopted repeal of the rules does not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The repeals also do not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted repeal does not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the adopted repeal relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the repeal is consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The rulemaking action and SIP revision ensures that the repeal complies with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 114 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; therefore, owners or operators subject to the federal operating permit program

must, consistent with the revision process in Chapter 122, revise their operating permit to include the revised Chapter 114 requirements at their sites affected by the revisions to Chapter 114.

PUBLIC COMMENT

A public hearing on this rulemaking proposal was held in Austin, Texas, on January 10, 2006, at 10:00 a.m. in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle, but no oral comments were received. The public comment period closed at 5:00 p.m. on January 17, 2006. Written comments were submitted by the Houston Regional Group of Sierra Clubs (Sierra Club-Houston) and EPA. Sierra Club-Houston and EPA did not indicate whether they were for or against the adoption of the rule but provided specific comments on the rule.

RESPONSE TO COMMENTS

Sierra Club-Houston commented that the commission's constant changes to the Low Emission Vehicle Fleet requirements have resulted in economic and operational inefficiencies, higher costs for businesses and consumers, disillusionment with the law, and temporary or nonexistent reductions in air pollutants from motor vehicle fleets. Sierra Club-Houston commented that although these proposed repeals are predicated by Texas Legislature, the commission should look at its control strategies to determine whether the strategies will be needed in the long term or are just short-term stop-gap efforts.

The commission has made every effort to balance the effectiveness of the Texas Clean Fleet (TCF) program with the development of cleaner vehicles. As emissions standards for vehicles and engines have improved and become as stringent or more stringent than the TCF program, the commission has recognized the need for consistency and clarity with the Clean Fuel Fleet (CFF) requirements. At its inception, the TCF program was the state's substitute for the federal Clean Fuel Fleet program, and was developed to provide greater long-term emissions reductions through participation by private and government entities. With the development of cleaner running vehicles through the Tier II and heavy-duty diesel engines (HDDE) standards requirements, these same participating entities are continuing to provide for long-term emissions reductions by purchasing and replenishing their fleets with these cleaner vehicles. The commission did not revise the rule in response to this comment.

EPA commented that although they do not oppose the repeal of the Texas Clean Fleet program, they do take issue with the substitute measures that are proposed to be used in its place. EPA commented that, as allowed by §182(c)(4)(B) of the 1990 Clean Air Act, the State of Texas could substitute its TCF program with any program that results in as much or greater long-term emissions reductions as the federal Clean Fuel Fleet program. However, EPA further commented that Tier II or heavy-duty diesel engines (HDDE) standards programs could not be used as substitute programs. EPA commented that only certain vehicles and engines certified to current Part 86 emissions standards are either as stringent or more stringent than federal CFF emissions standards, and that it would be premature to assert that either Tier II or HDDE standards have superseded the CFF standards. EPA recommended that a demonstration be provided to show what federal CFF credits need to be substituted by the state rule credits that are beyond reasonably available control technology (RACT) to fulfill this requirement.

The commission appreciates the comment and EPA's concern related to the substitute measures to be used in place of the TCF

program. As stated in the comments, §182(c)(4)(B) of the 1990 Clean Air Act permits a state to submit a revision to the state implementation plan which "will achieve long-term reductions in ozone-producing and toxic air emissions *equal to* those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute." (*emphasis added*) Through this rulemaking, the TCEQ is repealing its Clean Fleet Program. As described more fully in the following paragraph, this revision will result in emission reductions in at least equal amounts to those achieved prior to the repeal of the TCF program.

The August 1998 *Clean Fuel Fleet Program Implementation Guidance* (EPA420-R-98-011) states that "Clean-Fuel Fleet light duty standards are the same as for Low Emission Vehicles (LEVs). . . ." With the advent of the National Low Emission Vehicle (NLEV) program beginning in the 2001 model year, the majority of the light-duty vehicles purchased around the country met LEV or better requirements. Therefore, if subject fleets were going to purchase "LEV-or-better" vehicles anyway, the CFF requirements were redundant for most light-duty purchases beginning with the 2001 model year. Certainly, there were exceptions to this, but the phase-in of the Tier 2 standards from the 2004 - 2007 model years make the CFF requirements redundant for all subject vehicles.

The primary benefits of the TCF program are the result of subject fleets having purchased "LEV-or-better" vehicles in the 1999 and 2000 model years, prior to introduction of the NLEV program. Without the TCF program, these subject fleets would have purchased higher emitting Tier 1 vehicles.

The TCEQ is simply proposing to repeal the redundant "LEV-or-better" requirement for new vehicle purchases. In short, there are no new additional benefits to be gained from the TCF program, but the current benefits from existing TCF vehicles shall remain.

Due to various factors, including existing vehicle emission requirements, the TCF program does not currently provide for, or result in reductions in ozone-producing and/or toxic air emissions. The Texas Clean Fleet SIP dated July 29, 1998, listed total volatile organic compounds (VOC) reductions of 4.937 tons per day for Houston-Galveston-Brazoria, Dallas-Fort Worth, and El Paso County combined. The VOC benefits were not broken out by area in this SIP or any other subsequent SIP. No Attainment Demonstration SIP benefit was ever claimed because no NO_x benefits were provided in the TCF SIP. One reason for not claiming an Attainment Demonstration SIP benefit is that the NLEV program was initiated at the same time, thus introducing LEV vehicles nationwide with the 2001 model year. Further, the TCEQ submitted the following interpretation of results in the TCF SIP: "The fleet analysis presented in the Results section clearly indicates that the state's substitute program, when combined with the reductions attributed to the NLEV program as shown in Table F, or with the reductions attributed to the state controls on fugitive emissions and VOC transfer operations as shown in Table G, will result in significant more emission reductions than the FCFF program in all affected nonattainment areas in Texas when examined over the long term (10 years)." (*Revisions to the State Implementation Plan (SIP) for the Substitution of the Federal Clean Fuel Fleets Program, July 29, 1998, Appendix B, Page 14*). Consequently, the repeal of this program results in reductions which are equal to those achieved prior to the repeal. No additional

substitute emission reduction strategies are necessary in order to fully satisfy the §182(c)(4)(B) statutory requirements.

Staff has determined that the Houston-Galveston-Brazoria (HGB), Dallas-Fort Worth (DFW), and El Paso SIPs will not be affected by the repeal because no reduction credits attributable to the TCF program have been claimed or credited in attainment demonstrations for these SIPs. Additionally, due to the timing of the development of the Beaumont-Port Arthur (BPA) Eight-Hour Ozone Attainment Demonstration SIP adopted by the commission on September 28, 2005, the region did not benefit from the TCF program and is also not affected by this repeal. As stated in the BPA SIP, LEV emissions standards outlined in the FCAA and referenced in the TCF program were surpassed by federal Tier 2 standards beginning with model year 2004 vehicles making the TCF requirements redundant. This occurred well before the development of the BPA SIP. Reduction credits claimed in the BPA attainment demonstration SIP were limited to those achieved through the NLEV program to avoid the possibility of "double counting" credits.

The availability and purchase of NLEV and Tier 2 vehicles have provided more reductions than the TCF program, thus making these programs more accurately identifiable as the most current reasonably available control measures (RACM). Repealing the TCF program, a program for which "zero" credits have been accounted in SIP attainment demonstrations, does not interfere with attainment and maintenance measures and does not constitute a "backsliding" activity.

An analysis of the TCF program and the NLEV program is available on the TCEQ website at www.tceq.state.tx.us/implementation/air/sip/apr2006txled.html.

Additionally, the TCEQ points to emission-reducing control strategies, not required under the Clean Air Act, which result in emission reductions beyond those achieved through the TCF program. Specifically, reductions achieved through the state's rules in 30 TAC §§115.352 - 115.359 in Subchapter D, Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas, in conjunction with requirements in §115.211(a)(1) in Subchapter C, Volatile Organic Compound Transfer Operations, provide additional emission reductions in furtherance of buttressing the repeal of the Clean Fleet Program with substantive credits. These identified reductions totaled more than 535.3 tons per day of VOC statewide. These requirements, identified in the TCF SIP, continue to be effective and provide reductions. Additionally, identified excess NO_x emission reductions resulting from state mandated reduction requirements placed on electric generating facilities (EGFs) by the 76th Texas Legislature in Senate Bill 7 for the HGB and DFW areas and identified as reductions used to make up any shortfall between the TCF and the federal CFF programs continue to be effective. The abundance of credits, beyond those necessary to conform with the implementation of a substitute program, was acknowledged by the EPA in its approval of the state's Clean Fleet Program. (See the February 7, 2001, issue of the *Federal Register* (66 FR 9203)). Irrespective of the fact that the repeal will not result in a loss of reductions, the use of these emissions to cover any shortfall in the Texas Clean Fleet Program was articulated in the state's 1998 SIP revision for Federal Clean Fuel Fleet substitute program. Such reductions not previously claimed or credited in SIP attainment demonstrations, along with reductions incurred as a result of the currently existing NLEV and Tier 2 programs, should amply satisfy the concerns

raised by the EPA in connection with the Clean Fleet Program repeal. The commission does not consider the currently existing NLEV and Tier 2 programs as substitute measures for the TCF program. Additionally, the Clean Cities, CMAQ, and TERP programs provide funding for replacing older equipment or vehicles with newer, cleaner vehicles or equipment. These voluntary programs will continue to encourage turnover at a more accelerated pace. The commission did not revise the rule as a result of this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.3

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles. Specifically, the repeal is adopted to implement the legislative mandate under SB 1032, 79th Legislature, 2005.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, and 382.019, and SB 1032, 79th Legislature, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0177



SUBCHAPTER E. LOW EMISSION VEHICLE FLEET REQUIREMENTS

30 TAC §§114.150, 114.151, 114.153 - 114.157

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which provide the commission with the gen-

eral powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (also known as the Texas Clean Air Act). The repeals are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles. Specifically, the repeals are adopted to implement the legislative mandate under SB 1032, 79th Legislature, 2005.

The adopted repeals implement THSC, §§382.002, 382.011, 382.012, and 382.019, and SB 1032, 79th Legislature, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318. Sections 114.6, 114.313, 114.315, 114.316, and 114.318 are adopted *with changes* to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8407). Sections 114.312 and 114.317 are adopted *without changes* and will not be republished.

The amended sections as adopted will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

On March 9, 2005, the commission adopted revisions to the low emission diesel fuel (LED) rules (§§114.312 - 114.319) and submitted them as a SIP revision to the EPA on March 23, 2005. Subsequently, EPA raised concerns with certain provisions of §114.315 that give the state unilateral authority to accept alternative methods of compliance. Specifically, EPA stated that subsections (b) and (c)(4)(C)(ii)(V) of §114.315 were problematic in regard to EPA's approval of the rule and SIP revision.

On July 5, 2005, the TCEQ's executive director (ED) wrote to the EPA's Region 6 director, Mayor Greene, requesting EPA exclude certain provisions of §114.315 from its review of the SIP submittal, and stating that the commission would address these provisions in a future rulemaking. On August 10, 2005, the EPA published a notice of proposed rulemaking in the *Federal Register* (70 FR 46448), proposing to approve the revisions, excluding the provisions of §114.315 the ED requested. On October 6, 2005, the EPA published a final rule in the *Federal Register* (70 FR 58325) that approved the SIP revision submitted by Texas, excluding the provisions of §114.315 the ED requested. The commission is adopting in this rulemaking revisions to the excluded provisions of §114.315(b) so that the ED consults EPA before approving an alternative test method and, accordingly, removes §114.315(c)(4)(C)(ii)(V).

These adopted rules also address issues raised by EPA regarding its consideration of alternative emission reduction plans (AERPs) as allowed under §114.318. Under the previous rule, the AERPs must be approved by both the ED and EPA. The ED has approved 17 AERPs to date. The EPA determined that the commission must submit the AERPs in the form of a SIP revision, requiring public review of each AERP. However, many of the diesel fuel producers consider their AERPs to be confidential business information. Furthermore, the commission would be required to submit a new SIP revision any time a producer amended its AERP. In lieu of a SIP revision, this rulemaking changes §114.318 to establish a method by which all AERPs could be approved by the ED and EPA without a SIP revision. The ED notified all holders of currently approved AERPs of the commission's intention to develop a protocol to facilitate EPA approval of AERPs that may impact the approvability of some strategies in these AERPs; however, the protocol will continue to allow a majority of the strategies in these AERPs, with some modifications. Under this adoption, all currently approved AERPs will expire December 31, 2006. Under the adopted changes to §114.318, producers wishing to use an AERP for compliance with the LED rules must submit an AERP under the new protocol by no later than November 15, 2006, to be approved before December 31, 2006. The commission believes that a December 31, 2006, expiration date provides an appropriate amount of time for producers to submit an AERP that would be approvable under the new protocol.

On October 14, 2005, the commission held a stakeholder meeting in Austin to solicit feedback on a draft protocol for state and federal approval of AERPs. Comments received as a result of this meeting were considered prior to the commission's proposal to revise the LED rules.

The LED amendments adopted on March 9, 2005, contained changes that included section restructuring, which require revisions to other sections of Subchapter H, Division 2 that were not modified in that rulemaking in order to correct citation references for consistency and accuracy. This adopted rulemaking makes changes to §114.313, Designated Alternative Limits, and §114.317, Exemptions to Low Emission Diesel Requirements, to correct rule references.

The commission is also adopting changes to the testing requirements for alternative diesel fuel formulations in §114.315. These changes clarify test procedures consistent with procedures and guidance approved by the EPA and the California Air Resource Board (CARB) from which the LED rules were initially patterned. The EPA requested the commission make these changes to ensure consistent and accurate emission testing

results. The adopted changes also apply to the testing of diesel fuel additive-based formulations.

SECTION BY SECTION DISCUSSION

Administrative changes are adopted throughout the rules to be consistent with *Texas Register* requirements and agency guidelines.

The adopted changes to §114.6 amend the definition of additive to clarify that substances added to gasoline or diesel that are registered with the EPA or added for the purposes of reducing exhaust emissions from motor vehicles or non-road equipment and are exempted from the EPA registration requirements are also considered to be additives under these rules. In addition, the new definition of additive does not reference the exclusion of an additive composed solely of carbon and/or hydrogen because this exclusion is already provided under 40 Code of Federal Regulations (CFR) Part 79 as it relates to fuel additive registration requirements. Also, the other adopted changes in §114.6 amend the definitions of final blend and LED for consistency relating to the acronym for LED and the definition of gasoline for accuracy in citing the reference to the American Society for Testing and Materials (ASTM) standard.

The adopted changes to §114.312(f) remove volatile organic compounds (VOCs) from the comparison requirements that are needed for consistency with the proposed changes to §114.315(c)(5) as described in the paragraph concerning changes to §114.315. Diesel engines emit very little VOCs and therefore, their contribution to total VOC emissions inventories is very small as well. In addition, since test data from alternative diesel fuel formulation approval testing has demonstrated that VOC emissions from the engines being tested on both the reference fuel and candidate fuels are significantly below the EPA's emission certification standards for these test engines, there is no additional benefit in comparing VOC emissions when determining whether an alternative formulation can achieve oxides of nitrogen (NO_x) emission reductions that are comparable to those attributed to LED in the SIP.

The adopted changes to §114.313 amend references to other sections of Subchapter H, Division 2, as needed for accuracy and consistency. The commission also adopts amendments to §114.313(a)(1) and (2) to change the word "shall" to "must" or "may" to conform to the drafting rules in the *Texas Legislative Council Drafting Manual*, November 2004.

The adopted changes to §114.315(a) specify the correlation equation to be used with ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography) to convert the supercritical fluid chromatography (SFC) results in mass percent to volume percent. The adopted changes to §114.315(b) require the ED to consult with and obtain agreement of the EPA before approving an alternative to the test methods listed under §114.315(a) in response to EPA's comments relating to ED approval without EPA review.

The adopted changes to §114.315(c) amend the procedures and testing requirements for alternative diesel fuel formulations to clarify what information is required to be submitted as part of the test protocol; specify that the sulfur content of the candidate fuel must not exceed 15 parts per million (ppm); clarify how many hot start emission test cycles will be required for each hot start only alternative test sequence; and remove the Alternative 5 test sequence in response to EPA's comments relating to ED

approval without EPA review. These adopted changes also require that the engine used for the testing have a minimum of 125 hours of use and exhibit stable operation before beginning the testing and be within 110% of the applicable exhaust emission standards when tested on the reference fuel. This change was needed to be consistent with the testing procedures and guidance approved for EPA's Environmental Technology Verification (ETV) Program. The adopted changes to §114.315(c)(5) require that the NO_x and particulate matter (PM) emissions of the reference and candidate fuels be compared when determining whether an alternative diesel fuel formulation is comparable or better than LED. This change was needed for consistency with the CARB regulations for approving alternative diesel fuel formulations since CARB-approved formulations are acceptable under §114.312(e). In addition, these changes also require that the average individual emissions of total hydrocarbons (THC) and non-methane hydrocarbons (NMHC), respectively, recorded during testing with the candidate fuel not exceed 110% of the test engine's applicable exhaust emission standards in order to prevent unacceptable increases in VOC emissions. The adopted changes to §114.315(c)(6) were needed for consistency with the approval notification provisions in §114.315(d). The adopted changes to §114.315(d) remove THC and NMHC from the comparison requirements for consistency with the adopted changes to §114.315(c)(5). The adopted new §114.315(d)(3) allows the approval of alternative diesel formulations that use the EPA's Unified Model to demonstrate that the applicable fuel properties of the formulation will achieve at least a 5.5% reduction in NO_x emissions from on-road diesel fuel for the year 2007, and at least a 6.2% reduction in NO_x emissions from non-road diesel. The adopted new §114.315(d)(4) allows the approval of alternative diesel formulations that receive a verification from EPA's ETV Program's Air Pollution Control Technologies Center and the EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program demonstrating at least a 5.78% reduction in NO_x emissions when compared against a base diesel fuel with fuel properties within the ranges as described for nationwide average fuel in EPA's *Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles* (Revision No. 03, September 2003). These additions were needed to specify criteria that may be used to demonstrate to the satisfaction of the ED and the EPA that the formulation will achieve reductions in emissions of NO_x and PM that are comparable to or better than LED.

The commission requested comments on whether additional "no-harm" testing should be required as part of the alternative diesel fuel formulation approval process to provide assurance that approved fuels and fuel additives are not harmful to the mechanical operation of diesel engines and what test protocols and/or test methods should be used if "no-harm" testing is required. The commission appreciates the response to the request for comment on this issue, however, as explained in the PUBLIC COMMENT section of this preamble, the commission does not agree that a no-harm testing requirement is a necessary prerequisite for LED compliance.

The adopted changes to §114.316(b) clarify that only those records relating to sampling require a statement declaring the appropriate aromatic hydrocarbon content standard of the fuel. The adopted changes to §114.316(e) correct the reference citation for the federal code for the new federal on-highway diesel fuel standards. The adopted changes to §114.316(k)

require producers who have AERPs approved under §114.318 to include information in their quarterly report that is required to be collected in accordance with the sampling and testing requirements of this subsection and to also include a reconciliation of the quarter's transactions relative to the requirements of this section for the appropriate fuel components of the diesel fuel that the projected emission reductions demonstrated in the producer's AERP were based upon.

The adopted changes to §114.317 amend references to other sections of this division as needed for accuracy and consistency.

The adopted changes to §114.318 establish a protocol that producers must follow when developing AERPs to ensure that equivalent emission reductions are being achieved. These adopted changes allow producers to submit AERPs using the EPA's Unified Model to demonstrate that the average of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the counties affected by these rules achieves at least a 5.5% reduction in NO_x emissions for the year 2007, and at least a 6.2% reduction from the average of all non-road diesel produced by the producer for use in the affected counties, equating to an average reduction of approximately 5.78% for both on-road and non-road diesel combined. Currently, a producer may use the Unified Model under §114.315(d) to demonstrate compliance using a specific fuel formulation. This adopted option allows for the submission of an AERP using a methodology that allows the averaging of different diesel fuel formulations within the same geographic area.

In addition, the adopted changes to §114.318 include procedures to allow AERPs to include diesel credits from early gasoline sulfur reduction that can be used in the 90-county area listed in §114.319(b)(4). The adopted changes to §114.318(b)(2) are significantly different than the proposed amendment, specifically, the tables containing gasoline-to-diesel offset ratios based on four wide ranges of sulfur reduction percentages have been replaced with methodologies to calculate the amount of noncompliant diesel fuel that may be offset by using the actual percentage of sulfur reduction in the gasoline supplied by the producer to the affected counties to calculate the appropriate gasoline-to-diesel offset ratio. The commission made these changes in response to public comments requesting a higher level of accuracy in the offset calculations than provided in the proposed amendment.

The diesel credits from early gasoline sulfur reductions will be calculated from the actual barrels of lower sulfur gasoline that was produced and supplied to the affected counties by the producer using the level of gasoline sulfur reduction to calculate the appropriate gasoline-to-diesel offset. The adopted methodologies for determining the appropriate offset ratios were developed using the EPA MOBILE6 emissions model to calculate the percentage of emission reduction from varying the sulfur level of gasoline in calendar years 2003, 2004, and 2005, from the MOBILE6 default gasoline sulfur level assumptions for those years, then weighting the reduction percentages by vehicle type between the four classes of gasoline vehicles with catalysts. Since the NO_x emission inventories change each year, the number of lower sulfur gasoline barrels needed to offset noncompliant diesel fuel is calculated by comparing the reduction percentages to the applicable emissions inventory of on- and off-road diesel fueled vehicles and equipment. However, the overall NO_x emissions inventory from on- and off-road diesel engines is always greater than just the on-road NO_x emissions inventory from gasoline engines. Therefore, in working out the appropriate offset

ratio, the reductions in NO_x emissions from lower sulfur gasoline is discounted as a reflection of its smaller overall contribution to the inventory. Because gasoline credits would start to be used in calendar year 2007, the 2007 diesel NO_x emissions inventory is used and remains a constant for these calculations. The weighted average NO_x emissions reduction achieved by using LED in the on-road and non-road fleets in 2007 is 5.78%.

For example, the gasoline NO_x emissions inventory in 2003 for the 90-county area was 229.51 tons per day. A 25% reduction in gasoline sulfur from 259 ppm to 194 ppm achieves a 2.75% reduction in gasoline NO_x emissions. The 2007 on- and off-road diesel NO_x emissions inventory for the same 90-county area is 450.56 tons. To calculate the appropriate 2003 gasoline-to-diesel offset ratio the following methodology is used: determine the 2003 MOBILE6 gasoline emission reduction associated with a 25% reduction in sulfur level using the following equation, i.e., $((0.0000007)(194) - (0.0007)(259) + (0.137)) = 0.0275$, and then use these results to determine the appropriate gasoline-to-diesel offset ratio using the 2007 diesel inventory multiplied by the weighted average LED reductions in 2007 divided by the 2003 gasoline inventory multiplied by the 2003 MOBILE6 gasoline emission reduction associated with a 25% reduction in sulfur level, i.e., $((450.56)(0.0578)) / ((229.51)(0.0275))$, which calculates an offset ratio of 4.12. Using this example, a producer that supplied gasoline with a 25% reduction in sulfur to the 90-county area in 2003 would be allowed to offset one barrel of noncompliant diesel fuel being supplied to the 90-county area in the years 2006 - 2010 for each 4.12 barrels of lower sulfur gasoline produced in 2003.

Also, the adopted changes to §114.318 provide an option to calculate diesel credits from early gasoline sulfur reduction in certain counties when used in combination with a "cleaner" diesel fuel, calculated with the Unified Model from the average fuel properties of the diesel fuel supplied by the producer in the 90-county area as part of the equation. If a producer is supplying a cleaner diesel fuel to the 90-county area, although not as clean as LED, the adopted rule allows the producer to use the emission reduction calculated with the Unified Model to decrease the offset ratio of gasoline. For example, if a producer elects to produce a diesel fuel that achieves a 2.0% NO_x emissions reduction in 2007 according to the Unified Model, the producer would calculate an offset ratio as follows: $((450.56)(0.0578 - 0.02)) / ((229.51)(0.0275))$, for an offset ratio of 2.69. In this case, only 2.69 barrels of lower sulfur gasoline would be needed to offset each barrel of "cleaner" noncompliant diesel fuel. Under this option, credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in calendar years 2003, 2004, and 2005, to the counties listed under §114.319(b)(4) and these credits can only be used to demonstrate compliance through December 31, 2010.

The commission requested comments on the feasibility of accepting residual NO_x emission benefits from the supply of early lower sulfur gasoline as a creditable fuel strategy for producers to submit as part of an AERP and how best to calculate the residual NO_x emission benefit using currently available EPA-approvable calculation methodologies. Based on comments received regarding this issue, the commission adopted a new §114.318(b)(4) specifying a methodology to determine the amount of noncompliant diesel that may be offset in the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) nonattainment area counties with credits from the residual effects of early gasoline sulfur reduction on the NO_x emission reduction efficiencies of catalytic converters installed

in gasoline-powered motor vehicles. These credits may only be generated from the volumes of reformulated gasoline (RFG) supplied to the DFW and HGB nonattainment area counties in 2004 and 2005 that had an average sulfur level that was below the sulfur level of 92 ppm in 2004 and 77 ppm in 2005, identified by EPA as being the base average sulfur levels for RFG during those years in both areas. These credits can only be used in the DFW and HGB nonattainment area counties for compliance through December 31, 2008. The credits generated in either one of these nonattainment areas may not be used for compliance in the other.

In addition, the adopted changes to §114.318(c) specify that all AERPs approved by the ED prior to December 16, 2005, will expire on December 31, 2006, with the exception that the ED may allow a producer operating under a previously approved AERP to continue to operate under that plan for a limited time beyond December 31, 2006, if the following conditions are met: the producer's previously approved AERP relied on the use of an alternative diesel formulation that has not been approved by the ED under §114.315(c); the producer has submitted an application to the EPA's ETV Program to pursue verification of this specific alternative diesel fuel formulation to demonstrate that it will achieve at least a 5.78% reduction in NO_x emissions; the producer has a contract with the EPA's testing center to perform the verification testing that is signed by both parties and paid in full by September 1, 2006; and the emissions testing as specified under a test plan approved by both the testing center and EPA is completed before December 1, 2006.

The adopted new §114.318(e) requires the ED to approve or disapprove newly submitted AERPs within 45 days of submittal.

The adopted new §114.318(f) specifies that AERPs submitted to the ED must contain sufficient documentation to validate the average diesel fuel properties used to calculate the emission reductions claimed when using EPA's Unified Model and, as appropriate, the sulfur properties and volumes of the gasoline that is being used to generate the diesel credit from early gasoline sulfur reductions. This documentation is necessary for the ED to determine in a timely manner if the submitted AERP is approvable.

The commission also requested comments on whether to allow credits from early gasoline sulfur reduction to be used until December 31, 2010, in the Beaumont-Port Arthur (BPA) ozone nonattainment area containing Hardin, Jefferson, and Orange Counties. Based on comments received from the EPA, the commission will not allow credit from early gasoline sulfur reductions to be used in the BPA nonattainment area counties.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318 provide for EPA consultation and agreement prior to commission approval of alternative test methods; establish a protocol by which AERPs, or revisions to those plans, could be approved

by the EPA without the need for individual SIP revisions for each plan; make alternative formulation testing requirements consistent with EPA guidance and CARB regulations; and make corrections to citations for accuracy and consistency. In addition, the adopted amendments are intended to provide additional clarification and flexibility in the LED air pollution control program as part of the strategy to reduce emissions of NO_x necessary for the counties in the HGB, BPA, and DFW nonattainment areas to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). While this strategy is intended to protect the environment by reducing NO_x emissions that help form ozone, the commission does not find that the diesel fuel producers and importers covered by this rulemaking comprise a sector of the economy, or that the revisions adopted in this rulemaking will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the HGB, BPA, and DFW nonattainment areas. This rulemaking will address EPA concerns regarding its input on test methods and review of alternative formulations; create consistency with EPA and CARB guidance and regulations of which the refining industry is familiar; and create a protocol for AERPs that will simplify EPA approval of all AERPs and protect producers' potentially confidential information.

The adopted amendments to Chapter 114 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the LED requirements in Chapter 114 were developed as part of the control strategy to meet the ozone NAAQS set by the EPA under Federal Clean Air Act (FCAA), 42 United States Code (USC), §7409, and therefore meet a federal requirement. The amendments to this chapter were developed in order to provide more clarity and consistency to the LED requirements, provide a smoother process for EPA approval of AERPs and revisions to those plans, and address concerns from the EPA. FCAA, 42 USC, §7410, requires states to adopt and submit a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq.* does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq.*, recognized that the states are in the best position to determine what programs and controls are necessary or appropriate

to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

As discussed earlier in this preamble, this rulemaking action implements requirements of 42 USC, §§7401 *et seq.* There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the adopted rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.019, 382.202, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the adopted rulemaking does not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the adopted rulemaking action under Texas Government Code, §2007.043. The specific purpose of this strategy is to achieve reductions of NO_x emissions to reduce ozone formation in the HGB, BPA, and DFW nonattainment areas and thus help bring these areas into compliance with the air quality standards established under federal law as NAAQS for ozone. As adopted, the amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318 provide for EPA consultation and agreement prior to commission approval of alternative test methods; establish a protocol by which AERPs, or revisions to those plans, could be approved by the EPA without the need for individual SIP revisions for each plan; make alternative formulation testing requirements consistent with EPA guidance and CARB regulations; and make corrections to citations for accuracy and consistency. These amendments will not place a burden on private, real property because this action does not require an investment in the permanent installation of new refinery processing equipment.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. Specifically, the emission limitations and control requirements of the LED air pollution control program were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to provide additional clarification and flexibility in implementing the LED program necessary for the state's nonattainment areas to meet the

air quality standards established under federal law as NAAQS. Attainment of the ozone standard will eventually require substantial reductions in NO_x emissions as well as VOC emissions. This rulemaking is only one step among many necessary for attaining the ozone standard.

In addition, Texas Government Code, §2007.003(b)(13), states that Texas Government Code, Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the HGB, BPA, and DFW areas exceeding the federal ozone NAAQS, that adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by improving the LED program that reduces ozone levels in these nonattainment areas and 90 central and eastern Texas counties. Consequently, these adopted rules meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the adopted rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the adopted rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the adopted amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The adopted rulemaking will ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

The commission solicited comments on the consistency of the amendments with the CMP during the public comment period, but did not receive any comments during the public comment period.

PUBLIC COMMENT

The public hearing for this rulemaking was held on January 10, 2006, in Austin. The following persons submitted written or oral comment: Alamo Area Council of Governments (AACOG);

Biofriendly Corporation (Biofriendly); Capital Area Council of Governments (CAPCOG); City of Houston (Houston); Dallas Area Rapid Transit (DART); Delek Refining, Ltd. (Delek); Flint Hills Resources, LP (FHR); Sierra Club, Houston Regional Group (Sierra-Houston); Lloyd Gosselink on behalf of the Texas Low Emission Diesel Coalition (Coalition); Texas Low Emission Diesel Coalition (Coalition) (forms turned in at hearing); EPA; and Valero Energy Corporation (Valero).

RESPONSE TO COMMENTS

Biofriendly, DART, and EPA generally supported the direction of the proposal. AACOG, Houston, and Sierra-Houston generally opposed the proposal. AACOG, Biofriendly, CAPCOG, Coalition, DART, Delek, EPA, FHR, Sierra-Houston, and Valero expressed concerns and/or suggested changes to the proposal.

Gasoline Credits

AACOG commented that it is opposed to the proposed changes to the AERP provisions in §114.318 because the use of credits from early introduction of lower sulfur gasoline will be allowed through 2010. AACOG also commented that the commission has not quantified possible loss of emission reduction credit in 2007 due to this rule proposal nor has the commission evaluated the impact on ozone attainment demonstrations. AACOG further commented that the quantity of gasoline credits available from petroleum producers has not been published nor is the distribution of such credits certain as necessary to assist AACOG's or the state's air quality planners in determining the extent of impact on AACOG's region from the proposed rule. CAPCOG expressed opposition to the use of credits from early gasoline sulfur reduction to offset LED compliance requirements through 2010 in the Austin Early Action Compact (EAC) counties as allowed under the proposed changes to §114.318 and recommended that the proposed LED rule revision be modified to offer the same protections on AERP approvals for the Austin EAC area as it does for nonattainment areas.

The commission believes that both the greater San Antonio and Austin areas received significant early reductions in NO_x emissions due to the efforts of fuel suppliers to these areas in the years 2003, 2004, and 2005. These early reductions were due to a voluntary lowering of the gasoline sulfur levels in these years. The commission believes these reductions played a part in the Austin area avoiding nonattainment of the eight-hour NAAQS for ozone and lowering the eight-hour ozone levels in San Antonio.

The LED rules were originally adopted in the 110 East Texas County area to assist DFW and HGB in reaching attainment with the one-hour NAAQS for ozone. Emission reductions for the EAC areas and other counties were a side benefit of the program. Having the LED rules applying to all 110 counties is still very beneficial and necessary for the ultimate achievement of attainment for both DFW and HGB. The commission has made no change in response to this comment.

EPA commented that the early reduction credits and averaging, banking, and trading (ABT) provisions of the federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Rule (40 CFR §§80.275, 80.285, and 80.305 - 80.315) allow most refineries to generate either sulfur allotments or early sulfur credits from early compliance with the Tier 2 sulfur requirements that began in 2000 and such emissions reductions can only be claimed once. EPA also commented that while it is possible for the MOBILE model to calculate a benefit to pre-Tier 2 vehicles, EPA does not believe the model can reflect real-world benefits because of the uncertainty of fueling habits of the general pub-

lic. EPA further commented that it does not support allowing credits for early implementation of low sulfur gasoline for use in BPA nonattainment area and the EAC areas past December 31, 2006. Valero stated there will be a reduction in NO_x levels in 2006, 2007, and 2008, due to a residual NO_x effect because the catalytic converters in gasoline-powered motor vehicles in DFW and HGB were exposed to less sulfur and will perform more efficiently. Valero expressed concern that the commission's proposal to eliminate the credit for residual NO_x effects after December 2006, is based on the commission's belief that these credits are too difficult to calculate. Valero also commented that its AERP using residual credits was approved by the commission in August of 2005.

The commission agrees with Valero's comments and has made changes to the rule to include a methodology for determining credits from the residual effects of early gasoline sulfur reduction on the NO_x emission reduction efficiencies of catalytic converters installed in gasoline-powered motor vehicles in the DFW and HGB counties.

FHR recommended that the commission calculate the credits from early gasoline sulfur reduction based on the percent reduction on the refiner's actual annual gasoline reduction sulfur concentration instead of being placed into one of the three current categories. FHR requested that an equation that interpolates between the MOBILE 6.2 derived reductions of 25%, 50%, and 75%, which uses the refiner's actual average production sulfur level be used instead of the percent reduction corresponding to the highest sulfur level in the defined ranges.

The commission agrees with both comments and made changes to the rule to use the percent reduction from a refiner's actual annual gasoline sulfur reduction to calculate credits. In addition, the commission has revised the rules to include equations to calculate the percent reduction in NO_x for any average gasoline sulfur level between an upper and lower valid range.

Valero provided suggested regulatory language and a calculation protocol for determining credits from the residual NO_x effects of early gasoline sulfur reductions. Valero requested that the rule allow residual credits in 2006, 2007, and 2008, based on a calculation using actual barrels of lower sulfur gasoline produced and supplied to the DFW and HGB areas in 2005, and using offset ratios to determine diesel credits that were developed using EPA's MOBILE6 and RFG survey data. Valero noted an RFG survey that indicates sulfur levels different than that used in the SIP for years 2003, 2004, and 2005. Specifically, Valero stated the actual average sulfur in the HGB and DFW areas for these years was below the values projected by the SIP. Valero stated the average RFG sulfur value in the United States in 2004 was 92 ppm and the standard deviation was 63 ppm; and the average RFG sulfur for the first three quarters of 2005 was 77 ppm and the standard deviation was 56 ppm. Valero recommended setting the maximum sulfur for the base case at 189. Valero recommended using actual sulfur levels to counteract the issue that a given vehicle does not receive gasoline produced by just one refiner. Valero recommended using the same maximum sulfur or cap in the base case run and the early low sulfur gasoline case run in 2003 to counteract the effect of vehicles refueling with higher sulfur outside the DFW and HGB areas. Valero noted for the SIP, the RFG pool was not modeled separately from the conventional pool for sulfur, overstating NO_x emissions and taking a conservative approach. Valero stated that it has not seen sulfur credits used to raise the sulfur in the RFG pool that supplies DFW and HGB. Valero recommended use of the actual aver-

age sulfur value when available. Valero stated a producer that supplied early low sulfur gasoline as part of an AERP to DFW or HGB would divide the volume of gasoline supplied in 2005 by the offset ratios for 2006, 2007, and 2008, to determine the volume of noncompliant diesel for supply to the areas. FHR encouraged the commission to adopt Valero's proposal for the calculation of the residual NO_x effects from early gasoline sulfur reduction that could be used in the DFW and HGB areas. FHR also suggested that the same approach for capturing the benefits of the residual NO_x effects be applicable to the counties in §114.319(b)(4).

The commission considered Valero's comments and made changes to the rule to include a methodology for determining diesel credits for residual benefits in DFW and HGB from the early gasoline sulfur reductions. The commission coordinated with EPA in the development of the base case sulfur values for RFG in 2004 and 2005, and the gasoline-to-diesel offset ratios used for determining the amount of diesel credit from residual benefits that is used in the methodology adopted for use in the DFW and HGB nonattainment area counties. The EPA determined that there was no difference between the EPA-defined default values of gasoline sulfur in 2003, and what actually occurred in the HGB and DFW areas, but EPA did find a difference in the years 2004 and 2005 (based on RFG survey data for the two areas) and these values were used to calculate gasoline-to-diesel offset ratios for residual benefit adopted in this rulemaking. These gasoline-to-diesel offset ratios are valid for use starting in 2006 and expiring at the end of 2008. The commission appreciates the suggested rule language provided by Valero but adopted its own language to better fit the existing rule structure and to conform to the Texas Register style requirements.

Valero provided comments on a TCEQ white paper. Valero disagreed with the paper by stating it is appropriate to use the MOBILE6 model. Valero also raised the issue of sulfur irreversibility. Valero expressed the belief that there is no technical issue in using the MOBILE6 model to calculate benefits of early low sulfur gasoline.

The commission agrees that using the EPA's MOBILE6 emissions model is an appropriate method for calculating the benefits of early gasoline sulfur reductions. The methodologies for determining diesel credits from early gasoline sulfur reductions adopted in this rulemaking are based on modeling from the MOBILE6 model.

General Comments

EPA asked the commission to explain how the TxLED program will achieve the desired emission reductions if cumulative effect additives are approved for use, but are not consistently used in vehicles. EPA also asked how will trucks achieve the claimed reductions if they use different fuels approved under the TxLED program but not the same additive regularly. EPA expressed that the claimed emission reductions from cumulative effect additives should only be considered when the additive is used consistently such as in centrally fueled fleets where vehicles only use fuel with the additive.

The provisions for alternative formulations have been in the rule since 1999 and have been approved by EPA during all of the previous rulemakings. The provision for the Alternative 4 test sequence (allowing the testing of formulations with cumulative effects) was adopted by the commission in March of 2005, with no specific comments from EPA relating to this provision, and was ultimately approved by EPA in a final rule published on Oc-

tober 6, 2005, in the *Federal Register* (70 FR 58325). The commission has made no changes as a result of this comment.

Valero expressed support for the TxLED program, for the commission's efforts to meet clean air standards, and noted its capital expenditures to produce compliant diesel.

The commission appreciates Valero's long support of this diesel fuel emissions reduction strategy and implementation program.

Sierra-Houston commented that it is opposed to any proposal that allows AERPs to be labeled as "confidential business information" and kept from the public. Biofriendly commented that §114.315(c)(2)(B) should be amended to indicate specifically that all information gathered by the commission regarding the composition of an additive and/or the test (detection) method for that additive be confidential and may not be released by the commission to any third party without approval of the owner/provider of the confidential information.

The commission maintains that companies that submit AERPs have the right to claim that the information contained within these plans is confidential business information. In addition, as stated in the previous rulemaking on LED (30 TexReg 1782), the commission does not believe it is necessary or appropriate to include language suggested by Biofriendly. The commission is prohibited by Texas Health and Safety Code, §382.041 from releasing information to the public related to secret processes or methods of manufacture or production that has been marked confidential when submitted. The Texas Public Information Act (PIA) provides exceptions from public disclosure by any state agency for trade secret and business confidential information. Any confidential or trade secret information submitted to TCEQ should be clearly marked as such at the time submitted. Any requests for information so marked will be forwarded to the Office of the Attorney General as appropriate for a determination of the applicability of the PIA exceptions. The commission has made no changes to the rule based on these comments.

Sierra-Houston commented that the commission should clearly explain the importance of VOC in the control of air pollution from the evaporation and combustion of diesel fuels.

The contribution from diesel engines to the total VOC emissions inventories is very small because diesel engines inherently emit very little exhaust VOC emissions and diesel fuel emits virtually no evaporative VOC emissions in normal refueling operations. However, since VOC emissions can help contribute to the formation of ozone, the adopted rules will ensure that in order to be approved by the commission, alternative diesel formulations must demonstrate that no significant increase in VOC emissions occurs when the fuel is used in a diesel engine. The commission made no changes to the rules in response to these comments.

Sierra-Houston commented that the proposal was confusing because of the multiple average percentage requirements listed in the rule proposal (i.e., 5.5%, 5.7%, 5.78%, and 6.2%) and requested that the commission simplify the rule.

The emission reductions from the LED rules are not inconsistent. Emission reductions are different for on-road (5.5% reduction) and non-road (6.2% reduction). The weighted average based on the percentage of NO_x from the on-road and non-road inventories is 5.78%. The commission made no changes to the rules in response to this comment but did make a change in the SECTION BY SECTION DISCUSSION of this preamble to correctly reference the weighted average of 5.78%.

Biofriendly commented that the commission should accept biodiesel that meets the ASTM D6751 standards when approving an acceptable biodiesel blended LED.

The commission has provided biodiesel producers the opportunity to comply with the LED requirements under an AERP that will allow the blending of B100 biodiesel with LED-compliant diesel fuel for use in the 110 counties affected by the LED requirements. The B100 biodiesel must meet ASTM D6751 standards for B100 biodiesel and must be mixed with LED-compliant diesel fuel. This AERP will expire on December 31, 2006. After December 31, 2006, all biodiesel blends produced for use in the affected 110-county region must be produced in compliance with an alternative diesel formulation that is approved by the commission.

Delek recommended that the commission issue a grandfather waiver, until at least 2010, for small refiners that complied with original AERP rules and were granted an AERP. Delek noted that grandfathered AERP fuel subject to a waiver could be limited to fuel transported directly from the refiner to a retail outlet or fleet user and not commingled with other fuel in a pipeline or terminal tanks.

The commission cannot create a grandfather provision for any diesel supplier without losing a potentially significant amount of NO_x reduction. There are several ways to comply with the LED rules, including the purchase of approved additives. With the multitude of compliance options, the commission does not believe a grandfathering provision is warranted.

Delek stated that it does not have the financial resources of the large refining companies and the proposed change in the AERP rules for TxLED will pose an unacceptably high financial burden, which cannot be recovered through competitive market pricing.

The LED rules provide multiple options for compliance and the commission would be glad to assist Delek in determining which option would best accommodate Delek's needs.

Delek commented that the proposal provides only two months after final rule adoption for existing approved plans to remain in effect and before new/revised plans would have to be approved and implemented. Delek stated that additional time is required for compliance with the proposed rule change. Delek noted that because the commission approved the facility's AERP, Delek committed to the EPA to make all ultra-low sulfur diesel (ULSD) as a condition of a small refinery hardship waiver, extending compliance with Tier II gasoline sulfur standards to 2008.

An agreement with the EPA for a federal gasoline program does not relieve Delek of its responsibilities to comply with the commission's state diesel fuel regulation.

FHR supported the commission's proposal to extend the expiration date on the use of early gasoline credits from 2007 until 2010. FHR also requested that the commission consider not having an expiration date and allowing refiners to utilize all of the gasoline credits that they have generated.

The commission disagrees. Credits should be expended by 2010. This time period should be adequate for a refiner to implement changes to comply with LED requirements without the use of gasoline credits.

Delek recommended that the commission should determine if the extensive use of additives and probable elimination of existing approved AERPs will have a market price impact beyond the previous estimated range.

The commission believes that the market will determine the most economical way of complying with the LED requirements. If an additive's cost or supply is at issue, a refiner has other compliance options.

Delek stated that the commission should provide an added incentive to move to low- NO_x engines by allowing the use of conventional (non-TxLED) ULSD. Additionally, ULSD sold for use in a low-NO_x engine should not only qualify for an AERP, but should generate a credit to be used for fuel that does not meet TxLED standards, if those engines have not been converted or purchased using Texas Emission Reduction Plan (TERP) funding.

The commission believes there is some level of additional reduction from the use of LED even in advanced technology low NO_x engines. The commission has made no change in response to this comment.

FHR suggested that the commission avoid the possibility of approving additives that are not acceptable to diesel engine and diesel exhaust after treatment system suppliers by requesting that additives be ashless.

Some additives contain fuel-borne catalysts that are usually metals, these are commonly defined as ash. These catalysts can help reduce diesel PM but also can contribute to plugging of diesel particulate filters. Metals are also commonly found in the lube oil. Lube oil being burned and passed through the combustion chamber also contributes to ash in the exhaust. It is not expected that diesel particulate filters will be in widespread use in the United States for the foreseeable future. Therefore, the commission is not including an ashless requirement for diesel fuel additives used for compliance with the LED rules. The commission reserves the right to require ashless additives in the future if warranted.

No-Harm Testing

EPA commented that a supplier should be in a position to guaranty that the approved fuels or fuel additives are not harmful to the mechanical operation of diesel engines. EPA also stated that the key factor for determining "no harm" is the effect of the fuel or additives on the elastomers used in diesel engines and that there are several ASTM standards available upon which a test system should be formulated to test the properties of the elastomers under different conditions. EPA further commented that requiring the supplier of an approved alternative diesel formulation to provide a warranty or the results of such tests prior to the approval of an alternative formulation would be appropriate. Both EPA and the Coalition supported the inclusion of some type of "no-harm" test requirement in the rule. EPA recommended that the rules should be amended to include a supplier or producer guarantee that the "approved fuels and fuel additives are not harmful to the mechanical operation of diesel engines." The Coalition commented that the current rule only requires emission and performance testing methods for additives and alternative formulations. The Coalition suggested that the commission's current position on not providing for no-harm testing violates its statutory mandate to implement cost-effective environmental regulations. The Coalition expressed the belief that extreme market conditions of the LED fuel market may result in unreliable products being forced onto the market as producers take extreme measures to avoid fuel shortages. The Coalition expressed concern that the current rule language does not provide for "no-harm" testing of additives that would demonstrate the long-term compatibility of fuels and additives with diesel en-

gine components and dynamometer tests that demonstrate the impact of fuels and additives on engine horsepower. Additionally, the Coalition suggested that the commission require filter media compatibility testing and elastometer testing. EPA also suggested that a key component of no-harm testing should be elastometer testing. EPA commented that such tests could be similar to current tests conducted by lubricant manufacturers on wear and tear on piston rings, cylinders, and crankshaft bearings. EPA also suggested that a supplier's warranty of no-harm testing prior to approval of a formulation would be appropriate.

The commission appreciates the response to our request for comment on this issue, however, does not agree that a no-harm testing requirement is a necessary prerequisite for LED compliance. All of the approved additives, up to this point, have voluntarily done no-harm testing without being required by our agency. The commission is confident that in order to be competitive an additive would not only have to compete on price but also on the assurance that the product would not damage engines by showing that no-harm testing has been done. The commission does not believe that there are "extreme market conditions" in the LED market because of the numerous strategies available for compliance with LED requirements. Therefore, the commission does not anticipate producers taking "extreme measures" such as using unreliable products in order to come into compliance with LED regulations. Additionally, this type of information should be available through EPA. All fuels and fuel additives that are intended for use in on-road motor vehicles are required by federal regulation to be registered with EPA prior to introduction into commerce. Registration involves providing a chemical description of the product and certain technical, marketing, and health-effects information. This allows EPA to identify the likely combustion and evaporative emissions. The commission also recognizes that its authority to regulate diesel fuels is predicated on the need to reduce air emissions and protect public health and the environment. The commission does not have the authority to restrict the production, sale, or importation of fuels or additives based upon engine quality and performance impacts of those products. However, the commission does expect that fuel and additive producers will have conducted these no-harm tests in order to meet customer expectations and market their product. The commission encourages fuel and additive producers to make these no-harm tests publicly available. The commission made no changes to the rules in response to these comments.

Section-Specific Comments

EPA commented that the phrase "required to be" in the definition of additive in §114.6 may be misinterpreted to mean that additives may be used in Texas before being approved and registered by EPA and therefore, EPA does not recommend the adoption of this change.

The commission made changes to the rule in response to this comment and revised the definition of additive to clarify that substances added to gasoline or diesel fuel, which are registered with the EPA in accordance with 40 CFR Part 79 and those that are added for the purpose of reducing exhaust emissions from vehicles and equipment but are exempted from EPA registration requirements under 40 CFR Part 79, are considered to be additives under these rules.

EPA commented that the changes to §114.315(b) do not resolve its concerns regarding ED discretion and stated that "consultation" is not adequate in the case of disagreements. EPA suggested that this subsection be changed to read "with the consent of EPA," or "consultation and agreement by EPA," or changed to

resemble §114.315(d) in which it would be demonstrated to the satisfaction of the ED and the EPA.

The commission agrees with the comment and has made the changes to §114.315(b) as noted.

EPA commented that §114.315(c)(4) should be amended to add the phrase, "and in the Environmental Technology Verification Protocol of the EPA, where applicable" at the end of the reference to 40 CFR Part 86, Subpart N.

The commission declines to make this change. The emission testing procedures specified under §114.315(c) are designed to certify that the emissions generated when using an alternative diesel formulation are comparable to the emissions generated when using the LED reference fuel in the same test engine. The test procedures under this rule are not designed to verify a specific percentage of emission reductions as the EPA's *Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles* (Revision No. 03, September 2003) was designed to achieve. The commission made no changes to the rules in response to these comments.

FHR commented that the language in the proposed §114.315(c)(6)(A)(i) is less clear than current language and could be interpreted to be requiring a specific aromatics concentration, rather than a maximum. FHR also stated that §114.315(c)(6)(A)(ii) does not clearly define the requirements for this "minimum specifications of the base diesel fuel" and that it would be clearer to use language similar to the present regulations and say that the base fuel properties for total aromatics should not exceed those of the base fuel used in the additive verification.

The commission disagrees. The commission believes that the approval notification for alternative diesel formulations should only contain information regarding the characteristics of the formulation that are relevant for compliance and enforcement purposes. The commission made no changes to the rules in response to this comment.

Biofriendly commented that §114.315(d) should be revised to add the phrase, "EPA's Environmental Technology Verification program," in the sentence just after ". . . to the satisfaction of the executive director" to allow fuels and fuel additives that have been tested under this EPA program to be considered for approval as an alternative diesel formulation.

The commission declines to make the suggested changes. The need for EPA's approval is already explicit under the existing rule text in this section, therefore, there is no need to include a specific EPA program.

EPA commented that §114.315(d)(2) should be amended to add the phrase, "and the EPA," in the sentence just after "executive director" to be consistent with subsection (d).

The commission agrees with the EPA comment and made changes to the rule accordingly.

EPA commented that it does not oppose the removal of EPA approval from §114.318(a) because a replicable procedure for the state to approve the AERPs is being proposed. EPA commented that the critical part of a replicable procedure is public participation in the process at the state level and that public participation

is being carried out through the proposal notice and comment period in which the state is enacting the revised §114.318.

The commission appreciates the support for this method.

FHR commented that there are two distinct problems with the December 31, 2006, expiration date for currently approved AERPs as proposed in §114.318(c). First, it does not appear that the commission has provided itself with the discretion to extend the year-end expiration date when circumstances warrant. Second, the proposed transition process from existing plans to revised plans creates unnecessary confusion and is inconsistent with how the commission handles such transitions in analogous situations under other environmental rules.

The commission considered FHR's comment and made changes in §114.318(c) of the adopted rule to provide the ED flexibility to allow a producer to continue using a currently approved AERP for a limited time beyond the December 31, 2006, expiration date if certain specific conditions are met.

CAPCOG recommended that §114.319(b) be revised to move the Austin EAC counties (Travis, Williamson, Hays, Bastrop, and Caldwell) to a separate grouping under a new paragraph (5) or specify that credits from early gasoline sulfur reduction as provided under §114.318 may not be used in the Austin EAC counties. DART recommended revisions to §114.319 to mitigate the cost impact of future potential changes to the TxLED regulations by adding a new subsection (d) to read "Any rule changes affecting the cost or availability of fuel shall allow sufficient time for replacement of long term contracts for supply of fuel under this rule."

The commenters are requesting an action that is beyond the scope of this rulemaking, as §114.319 (Affected Counties and Compliance Dates) was not amended in the proposed rules that were published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8407). The commission has no authority to specify the length of private long-term fuel contracts. Contractual provisions should be made to long-term contracts to accommodate potential rule changes which may affect prices. The commission made no changes to the rules in response to these comments.

Supply and Distribution Data from Producers and Importers

The Coalition commented that end users of diesel fuel cannot determine the market availability of fuel types in their specific areas. The commission registration forms do not provide adequate information and many are submitted by producers and importers under claims of confidentiality. The only information provided by the commission publicly is a one-page summary containing a list of producers and importers, total volumes, and projected volumes of LED-compliant fuel. This information does not adequately provide information on whether the fuel is provided under an AERP, alternative formulation, or other LED-compliant fuel. The Coalition suggested that the commission could "re-aggregate" the data collected from registration forms into a more useful format that explains how much fuel will be produced using additives, under AERPs, or some other LED compliance strategy in each of the 110 counties. The Coalition commented that this information could be made available publicly without compromising the confidentiality of market information submitted by producers and importers.

The commenters are requesting a change to §114.314, Registration of Diesel Producers and Importers. This section is not open for amendment in this rulemaking. The Coalition also sug-

gests data collection changes that are not required by rule and were developed as part of the TCEQ registration form. The commission will continue to work with producers and importers of LED-compliant fuel as well as end users to develop useful information about market supply without compromising the confidentiality of individual producers' data.

The Coalition expressed the belief that the commission could greatly enhance its ability to predict impacts within regions of the 110-county area if it were to utilize data directly derived from demand projections based on actual diesel fuel usage in the affected counties. The commission used data that appears to be extrapolated from gasoline usage and population distribution. The Coalition expressed the belief that the TCEQ has severely underestimated diesel fuel demand for the 110-county affected area. An approach that uses real diesel fuel sales data to assess fuel demand is suggested, using data collected from the Texas Comptroller's Office representative of fuel consumption in the 110-county area. Alternatively, the commission should require fuel producers and importers to submit such data or its equivalent. Delek raised concern of potential supply issues and increased prices. Delek recommended that the commission should re-survey suppliers before setting a compliance date for the revised rule to determine if volumes previously committed will still be available.

As stated previously, market data aggregation through producer registration forms is not open for amendment at this time. The commission remains confident that supply of -compliant fuel in the 110-county area of Texas will be sufficient due to the variety of choices (i.e., LED fuel, alternative formulations, CARB diesel, and AERPs) available to producers and importers to comply with the rule. The amendments adopted in this rulemaking will not alter this assessment of supply. In fact, these changes in the LED rules should provide greater flexibility and assurances that adequate supply of LED-compliant fuel will be available in the affected counties. For instance, the AERP protocol in §114.318 will create a more consistent approach to developing these plans and streamline the TCEQ and EPA approval process, thereby giving producers through end users more confidence that LED supply will not be disrupted due to any compliance uncertainties.

Price Concerns and Fiscal Note Analysis

The Coalition expressed concern about the potentially inflated fuel prices that are likely to result from the boutique and additized LED fuel market. The LED program and its purposes have evolved over many years and the changes made have been substantive, yet there has never been a meaningful fiscal analysis of the rule. There seems to be no doubt that the evolving LED program will increase the cost of LED-compliant fuel and this cost may or may not be able to be passed on to customers. This is especially true for certain end users such as municipalities, small businesses, and private citizens. The Coalition commented that the fiscal note in the proposal fails to consider the impact on state agencies, local governments, the public, and the regulated community, as required under Texas Government Code, §2001.0225(c) and §2001.024(a)(4) and (5). The proposal states any fiscal implications will primarily affect the producer and suppliers, and not typically government entities. The commission should evaluate how the fuel price increase will be passed on to local governments, state agencies, and the public.

The commission disagrees with this comment and has made no changes to the rule. As discussed in the response regarding the regulatory impact analysis, this rule is not a major environmental rule. Therefore, §2001.0225(c) does not apply. However,

the commission did meet the requirements of §201.024. Section 2001.024 does not require an evaluation of how an increase in diesel prices resulting from this rule will affect end users. The Government Code requires the commission to assess costs to persons that must comply with the rules. In previous rulemakings, the commission has done just that, by estimating a production cost increase of \$.04 to \$.08 per gallon of diesel to meet LED standards. As stated in the proposal, the commission believes that these specific amendments to the LED rules will primarily affect producers and suppliers of LED, which typically do not include governmental entities. The adopted amendments make changes to testing, recordkeeping, and AERP requirements. This rulemaking does not amend the LED standard itself and does not change the rules in such a way that would increase the production cost estimated by the commission in previous rulemakings on LED.

Regulatory Impact Analysis

The Coalition stated that the commission did not develop a full regulatory impact analysis and fiscal analysis as required for a major environmental rule under Texas Government Code, §2001.0225. The Coalition argued that the amendments to Chapter 114, Subchapter H, Division 2 is a major environmental rule because it exceeds a standard set by federal law. As evidence, the commission was required to submit a waiver in accordance with 42 USC, §7545(C)(4)(c) when the rules were originally adopted. The state has also not demonstrated how this rule is specifically required by state law.

The commission disagrees with this comment. As stated in the preamble published in the *Texas Register* on December 16, 2005 (30 TexReg 8407 and 8410), the commission determined that this rulemaking does not meet the definition of a "major environmental rule." The commission discussed at length in the draft regulatory impact analysis section of the preamble that the ozone NAAQS is a federal requirement set by EPA that must be met by states at a certain date. The FCAA (42 USC, §7410) provides that states must develop SIPs that include "enforceable emission limitations, and other control measures, means or techniques" necessary to meet the NAAQS. The LED rules were developed as part of the control strategy to meet the NAAQS. The commission also described in the draft regulatory impact analysis that this rule is specifically required by Texas Health and Safety Code, §382.012, which requires the state to develop a general, comprehensive plan for the proper control of the state's air, in other words, a SIP. The rule also meets the specific requirements of: Texas Health and Safety Code, §382.019, providing the commission the authority to control and reduce emission from engines used to propel land vehicles; §382.202, restricting the establishment of fuel content standards before January 1, 2004, or the distribution of Texas LED as described in the SIP prior to February 1, 2005; and §382.208, requiring the commission to develop and implement, in coordination with federal, state, and local transportation planning agencies, transportation programs and other measures necessary to demonstrate attainment of the NAAQS and protect the public from exposure to hazardous air contaminants from motor vehicles. Because the rule is not a "major environmental rule," the regulatory analysis requirements of Texas Government Code, §2001.0225 do not apply.

Applicability of Rule on Wholesale Bulk Purchasers

Because of additive based alternative plans, the Coalition expressed the belief that some end users will in fact become "producers" and thus be subject to the reporting and recordkeeping requirements. Some Coalition members may become produc-

ers because they purchase large quantities of diesel fuel for fleet use and will blend in additives to create TxLED-compliant fuel on their sites prior to use in individual fleet engines. The commission's guidance on TxLED appears to set a trigger of 50,000 gallons for becoming a wholesale bulk purchaser, however, there is no explanation for this cut-off and whether there is an exception for lesser quantities of fuel. The Coalition suggested a clarification in the preamble to better explain the applicability of the rule to end users.

The provisions for timing of when bulk purchasers should start distributing LED have passed. As of January 1, 2006, only LED should be provided to bulk purchasers regardless of the tank size. The commission has made no changes to the rule in response to these comments.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.6

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider AERPs to comply with LED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

§114.6. Low Emission Fuel Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by TCAA, §3.2, and §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), have the following meanings, unless the context clearly indicates otherwise.

(1) Additive--Any substance that is intentionally added to gasoline or diesel fuel, including any added to a motor vehicle fuel system, and that is not intentionally removed prior to sale or use and that is:

(A) registered with the United States Environmental Protection Agency (EPA) in accordance with 40 Code of Federal Regulations Part 79; or

(B) added to gasoline or diesel for the purpose of reducing exhaust emissions from motor vehicles or non-road equipment and is exempted from the EPA registration requirements in accordance with 40 Code of Federal Regulations Part 79.

(2) Barrel--A unit of measure equal to 42 United States gallons.

(3) Bulk plant--An intermediate motor vehicle fuel distribution facility where delivery of motor vehicle fuel to and from the facility is solely by truck or pipeline.

(4) Bulk purchaser/consumer--A person who purchases or otherwise obtains motor vehicle fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.

(5) Common carrier--A person engaged in the transportation of goods or products of another person for compensation and is available to the public for hire.

(6) Designated alternative limit (DAL)--An alternative specification limit for a specific fuel standard, which is assigned by a producer or importer to a final blend of low emission diesel fuel (LED) in accordance with §114.313 of this title (relating to Designated Alternative Limits).

(7) Diesel fuel--Any fuel that is commonly or commercially known, sold, or represented as Grade No. 1-D or Grade No. 2-D diesel fuel, in accordance with the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), except for lubricity.

(8) Final blend--A distinct quantity of low emission diesel fuel (LED) that is introduced into commerce without further alteration, which would tend to affect a regulated specification of LED.

(9) Further process--To perform any activity on motor vehicle fuel, including distillation, treating with hydrogen, blending, or addition of an approved additive, for the purpose of bringing the motor vehicle fuel into compliance with the requirements of Subchapter H of this chapter.

(10) Gasoline--Any fuel that is commonly or commercially known, sold, or represented as gasoline, in accordance with American Society for Testing and Materials (ASTM) D4814-99 (Standard Specification for Automotive Spark-Ignition Engine Fuel), dated 1999.

(11) Import--The process by which motor vehicle fuel is transported into the State of Texas by any means or method whatsoever, including transport via pipeline, railway, truck, motor vehicle, barge, boat, or railway tank car.

(12) Import facility--The stationary motor vehicle fuel transfer point wherein the importer takes delivery of imported motor vehicle fuel and from which imported motor vehicle fuel is transferred into the cargo tank truck, pipeline, or other delivery vessel from which the fuel will be delivered to a bulk plant or retail fuel dispensing facility.

(13) Importer--Any person, except a person acting as a common carrier, who imports motor vehicle fuel.

(14) Low emission diesel fuel (LED)--Any diesel fuel:

(A) sold, intended for sale, or made available for sale that may ultimately be used to power a diesel fueled compression-ignition engine in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates);

(B) that the producer knows, or reasonably should know, may ultimately be used to power a diesel fueled compression-ignition engine in counties listed in §114.319 of this title; and

(C) complies with the standards specified in §114.312 of this title (relating to Low Emission Diesel Standards).

(15) Motor vehicle--Any self-propelled device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine in or by which a person or property is or may be transported, and is required to be registered under Texas Transportation Code (TTC), §502.002, excluding vehicles registered under TTC, §502.006(c).

(16) Motor vehicle fuel--Any gasoline or diesel fuel used to power gasoline fueled spark-ignition or diesel fueled compression-ignition engines.

(17) Non-road equipment--Any device powered by a gasoline fueled spark-ignition engine or a diesel fueled compression-ignition engine that is not required to be registered under Texas Transportation Code, §502.002.

(18) Produce--Perform the process to convert liquid compounds that are not motor vehicle fuel into motor vehicle fuel, except where a person supplies motor vehicle fuel to a producer who agrees in writing to further process the motor vehicle fuel at the production facility and to be treated as a producer of the motor vehicle fuel, only the final producer shall be deemed for all purposes under Subchapter H of this chapter to be the producer of the motor vehicle fuel.

(19) Producer--Any person who owns, leases, operates, controls, or supervises a production facility and/or produces motor vehicle fuel.

(20) Production facility--A facility at which motor vehicle fuel is produced or that manufactures liquid fuels by distilling petroleum.

(21) Retail fuel dispensing outlet--Any establishment at which gasoline and/or diesel fuel is sold or offered for sale for use in motor vehicles, and the fuel is directly dispensed into the fuel tanks of the motor vehicles using the fuel.

(22) Supply--To provide or transfer fuel to a physically separate facility, vehicle, or transportation system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 27, 2006.

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-0348



SUBCHAPTER H. LOW EMISSION FUELS

DIVISION 2. LOW EMISSION DIESEL

30 TAC §§114.312, 114.313, 114.315 - 114.318

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider AERPs to comply with LED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

§114.313. *Designated Alternate Limits.*

(a) A producer or importer may assign a designated alternative limit (DAL) for aromatic hydrocarbon content to a final blend of low emission diesel fuel (LED) produced or imported by the producer or importer, except for that LED produced in accordance with §114.312(f) of this title (relating to Low Emission Diesel Standards), if the following conditions are met.

(1) In no case may the aromatic hydrocarbon content of the final blend shown by the sample and test conducted in accordance with §114.315 of this title (relating to Approved Test Methods) exceed the assigned DAL.

(2) The producer or importer shall notify the executive director of the volume (in barrels) and the DAL of the final blend. This notification must be received by the executive director before the start of physical transfer of the LED from the production or import facility, and in no case less than 12 hours before the producer completes physical transfer of the final blend.

(3) Within 90 days before or after the start of physical transfer of any final blend of LED to which a producer or importer has assigned a DAL exceeding the limit for aromatic hydrocarbon content specified in §114.312(b) of this title, the producer or importer shall complete physical transfer from the production or import facility of LED in sufficient quantity and with a DAL sufficiently below the standard specified in §114.312(b) of this title to offset the volume of aromatic hydrocarbons in the LED reported in excess of the standard.

(b) No person shall sell, offer for sale, or supply LED, in a final blend to which a producer or importer has assigned a DAL:

(1) exceeding the standard specified in §114.312(b) of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied exceeds the volume reported to the executive director in accordance with subsection (a)(2) of this section; nor

(2) less than the standard specified in §114.312(b) of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive director in accordance with subsection (a)(2) of this section.

(c) Whenever the final blend of a producer or importer includes volumes of diesel fuel the producer or importer has produced or imported, and volumes it has not produced or imported, the producer's or importer's DAL shall apply only to the volume of diesel fuel the producer or importer has produced or imported. In such a case, the producer or importer shall report to the executive director in accordance with subsection (a)(2) of this section, both the volume of diesel fuel produced or imported and the total volume of the final blend.

§114.315. Approved Test Methods.

(a) Compliance with the diesel fuel content requirements of this division must be determined by applying the appropriate test methods and procedures specified in the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), or the following supplementary methods, as appropriate.

(1) The aromatic hydrocarbon content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography). The following correlation equation must be used to convert the supercritical fluid chromatography (SFC) results in mass percent to volume percent: aromatic hydrocarbons expressed in percent by volume = $0.916 \times (\text{aromatic hydrocarbons expressed in percent by weight}) + 1.33$.

(2) The polycyclic aromatic hydrocarbon (also referred to as polynuclear aromatic hydrocarbons or PAH) content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography). The correlation equation specified in paragraph (1) of this subsection must be used to convert the SFC results in mass percent to volume percent.

(3) The nitrogen content may be determined by the active version of ASTM Test Method D4629 (Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection).

(4) The American Petroleum Institute (API) gravity index may be determined by the active version of ASTM Test Method D287 (Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)).

(5) The viscosity may be determined by the active version of ASTM Test Method D445 (Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity)).

(6) The flashpoint may be determined by the active version of ASTM Test Method D93 (Standard Test Methods for Flash-Point by Pesky-Martens Closed Cup Tester).

(7) The distillation temperatures may be determined by the active version of ASTM Test Method D86 (Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure).

(b) Modifications to the testing methods and procedures in this section may be approved by the executive director after consultation with and agreement by the United States Environmental Protection Agency (EPA).

(c) The executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title (relating to Low Emission Diesel Standards) in accordance with the following procedures.

(1) The applicant shall initially submit a proposed test protocol to the executive director for approval, that must include:

(A) the identity of the entity that will conduct the tests described in paragraph (4) of this subsection;

(B) a testing plan with test procedures that are consistent with the requirements of paragraphs (2) and (4) of this subsection;

(C) fuel analysis test data showing that the candidate fuel meets the specifications for the appropriate Grade No. 1-D S15 or Grade No. 2-D S15 diesel fuel as specified in the active version of ASTM D975, except for lubricity, and identifying the characteristics of the candidate fuel identified in paragraph (2) of this subsection;

(D) fuel analysis test data showing that the fuel to be used as the reference fuel satisfies the characteristics identified in paragraph (3) of this subsection;

(E) a detailed description of the reasonable quality assurance and quality control procedures that will be implemented by the entity identified in subparagraph (A) of this paragraph to ensure the validity of the testing being performed; and

(F) notification of any outlier identification and exclusion procedure that will be used, and a demonstration that any such procedure meets generally accepted statistical principles.

(2) The applicant shall supply the candidate fuel to be used in the comparative testing in accordance with paragraph (4) of this subsection.

(A) The sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon, nitrogen content, cetane number, API gravity index, viscosity at 40 degrees Celsius, flash point, and distillation (in degrees Fahrenheit) of the candidate fuel must be determined as the average of three tests conducted in accordance with the referenced test method specified in subsection (a) of this section.

(B) For alternative diesel fuel formulations that use an additive in the candidate fuel to achieve reductions, the applicant shall provide to the executive director upon application, the identity, chemical composition, and concentration of each additive used in the formulation and the test method by which the presence and concentration of the additive may be determined.

(C) The applicant may also specify any other parameters for the candidate fuel, along with the test method for determining the parameters. The applicant shall provide the chemical composition of each additive in the candidate fuel, except when the chemical composition of an additive is not known to either the applicant or to the manufacturer of the additive (if other), the applicant may provide a full disclosure of the chemical process of manufacture of the additive in lieu of its chemical composition.

(3) The reference fuel used in the comparative testing described in paragraph (4) of this subsection must be produced from

straight-run diesel fuel by a hydrodearomatization process and must have the following characteristics determined in accordance with the referenced test method specified in subsection (a) of this section:

- (A) sulfur content - 15 parts per million maximum;
- (B) total aromatic hydrocarbon content - 10% maximum, volume percent;
- (C) polycyclic aromatic hydrocarbon content - 1.4%, maximum weight percent;
- (D) nitrogen content - ten parts per million, maximum;
- (E) cetane number - 48, minimum;
- (F) API gravity index - 33 to 39 degrees;
- (G) viscosity at 40 degrees Celsius - 2.0 to 4.1 centistokes;
- (H) flash point - 130 degrees Fahrenheit, minimum; and
- (I) distillation:
 - (i) initial boiling point - 340 to 420 degrees Fahrenheit;
 - (ii) 10% point - 400 to 490 degrees Fahrenheit;
 - (iii) 50% point - 470 to 560 degrees Fahrenheit;
 - (iv) 90% point - 550 to 610 degrees Fahrenheit; and
 - (v) end point - 580 to 660 degrees Fahrenheit.

(4) Exhaust emission tests using the candidate fuel and the reference fuel specified in paragraph (3) of this subsection must be conducted in accordance with the federal test procedures as specified in 40 Code of Federal Regulations Part 86 (Control of Emissions from New and In-Use Highway Vehicles and Engines), Subpart N (Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines - Gaseous and Particulate Exhaust Test Procedures), as amended.

(A) The tests must be performed using a Detroit Diesel Corporation Series-60 engine or an engine specified by the applicant and approved by the executive director to be equally representative of the post-1990 model year heavy-duty diesel engine fleet. The test engine must have a minimum of 125 hours of use and exhibit stable operation before beginning the testing specified in this paragraph and must not exceed 110% of its applicable exhaust emission standards when using the reference fuel specified in paragraph (3) of this subsection.

(B) The comparative testing must be conducted by a third party that is mutually agreed upon by the executive director and the applicant. The applicant shall be responsible for all costs of the comparative testing.

(C) The applicant shall ensure that one of the test sequences in clause (i) or (ii) of this subparagraph is used to conduct the exhaust emissions tests.

(i) If both cold start and hot start exhaust emission tests are conducted, a minimum of five exhaust emission tests, each test consisting of at least one cold start and two hot start cycles, must be performed on the engine with each fuel, using either of the following sequences, where "R" is a test on the reference fuel and "C" is a test on the candidate fuel: RC RC RC (and continuing in the same order) or RC CR RC CR RC (and continuing in the same order). The engine mapping procedures and a conditioning transient cycle must be conducted with the reference fuel before each cold start procedure using the reference fuel. The reference cycle used for the candidate fuel must be the same cycle as that used for the fuel preceding it.

(ii) If only hot start exhaust emission tests are conducted, one of the following test sequences must be used throughout the testing, where "R" is a test on the reference fuel and "C" is a test on the candidate fuel, each test consisting of at least three hot start cycles:

(I) Alternative 1: RC CR RC CR (continuing in the same order for a given calendar day; a minimum of 20 individual hot start cycles must be completed with each fuel);

(II) Alternative 2: RR CC RR CC (continuing in the same order for a given calendar day; a minimum of 20 individual hot start cycles must be completed with each fuel);

(III) Alternative 3: RRR CCC RRR CCC (continuing in the same order for a given calendar day; a minimum of 21 individual hot start cycles must be completed with each fuel); or

(IV) Alternative 4: RR CCC RR (a minimum of six hot start cycles must be performed on the reference fuel followed with a conditioning period not to exceed 72 hours of engine operation on the candidate fuel before the first individual hot start emission test on the candidate fuel is performed; the conditioning cycle must represent normal engine operation; a minimum of nine hot start cycles must be performed on the candidate fuel after the conditioning period; only the emissions from the tests on the reference fuel conducted before the candidate fuel tests must be used in the calculations conducted in accordance with paragraph (5) of this subsection; a minimum of six hot start cycles must be performed on the reference fuel after the candidate fuel tests to determine any carry-over effect that may occur from the use of the candidate fuel).

(iii) For alternatives 1, 2, and 3, an equal number of tests must be conducted using the reference fuel and the candidate fuel on any given calendar day. At the beginning of each calendar day, the sequence of testing must begin with the fuel that was tested at the end of the preceding day.

(iv) For all alternatives, the engine mapping procedures and a conditioning transient cycle must be conducted after every fuel change and/or at the beginning of each day. The reference cycle generated from the reference fuel for the first test must be used for all subsequent tests.

(v) Each paired or triplicate series of individual tests must be averaged to obtain a single value that would be used in the calculations conducted in accordance with paragraph (5) of this subsection.

(D) The applicant shall submit a test schedule to the executive director at least one week prior to commencement of the tests. The test schedule must identify the days that the tests will be conducted, and must provide for conducting the test consecutively without substantial interruptions other than those resulting from the normal hours of operations at the test facility. The executive director or his designee shall be permitted to observe any tests. The party conducting the testing shall maintain a test log that identifies all tests conducted, all engine mapping procedures, all physical modifications to or operational tests of the engine, all re-calibrations or other changes to the test instruments, and all interruptions between tests and the reason for each such interruption. All tests conducted in accordance with the test schedule, other than any tests rejected in accordance with an outlier identification and exclusion procedure included in the approved test protocol, must be included in the comparison of emissions in accordance with paragraph (5) of this subsection.

(E) In each test of a fuel, exhaust emissions of oxides of nitrogen (NO_x), total hydrocarbons (THC), non-methane hydrocarbons (NMHC), and particulate matter (PM) must be measured.

(F) The exhaust emissions tests described in this paragraph must not be conducted until the test protocol as described in paragraph (1) of this subsection is approved by the executive director.

(G) Upon completion of the tests described in this paragraph, the applicant may submit an application for certification to the executive director. The application must include the approved test protocol, all of the fuel analysis and emissions test data, a copy of the complete test log prepared in accordance with subparagraph (D) of this paragraph, a demonstration that the candidate fuel meets the requirements for certification specified in this subsection, and other information as the executive director may reasonably require. Upon review of the certification application, the executive director shall grant or deny the application. Any denial must be accompanied by a written statement of the reasons for denial.

(5) The average emissions during testing with the candidate fuel must be compared to the average emissions during testing with the reference fuel specified in paragraph (3) of this subsection, applying one-sided Student's *t* statistics as set forth in Snedecar and Cochran, *Statistical Methods* (7th edition), page 91, Iowa State University Press, 1980. The executive director may issue a certification in accordance with this paragraph only if the executive director makes all of the following determinations:

(A) the average individual emissions of NO_x and PM, respectively, recorded during testing with the candidate fuel are comparable or better than the average individual emissions of NO_x and PM, respectively, recorded during testing with the reference fuel;

(B) use of any additive identified in accordance with paragraph (2)(B) of this subsection in diesel powered engines will not increase emissions of noxious or toxic substances that would not be emitted by such engines operating without the additive;

(C) in order for the determinations in subparagraph (A) of this paragraph to be made, for each referenced pollutant the candidate fuel must satisfy the following relationship; and
Figure: 30 TAC §114.315(c)(5)(C)

(D) the average individual emissions of THC and NMHC, respectively, recorded during testing with the candidate fuel do not exceed the test engine's applicable exhaust emission standards.

(6) If the executive director finds that a candidate fuel has been properly tested in accordance with this subsection, and makes the determinations specified in paragraph (5) of this subsection, then the executive director may, after consultation with the EPA, issue an approval notification certifying that the alternative diesel fuel formulation represented by the candidate fuel may be used to satisfy the requirements of §114.312(a) of this title. The approval notification must identify all of the relevant characteristics of the candidate fuel determined in accordance with paragraph (2) of this subsection.

(A) The approval notification must identify the following specifications of the alternative diesel fuel formulation as approved under this subsection:

(i) the total aromatic hydrocarbon content, cetane number, or other characteristics as appropriate and as determined in accordance with the test methods identified in subsection (a) of this section; or

(ii) for an alternative diesel fuel formulation using an additive to achieve reductions, the identity and minimum concentration or treatment rate of the additive, the minimum specifications of the base diesel fuel used in the approved formulation, and the test method or methods that must be used to satisfy the monitoring require-

ments of §114.316 of this title (relating to Monitoring, Recordkeeping, and Reporting Requirements).

(B) The approval notification must assign an identification number to the specific approved alternative diesel fuel formulation.

(d) Notwithstanding subsection (c) of this section, the executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title that may be used to satisfy the requirements of §114.312(b) and (c) of this title if the applicant has demonstrated to the satisfaction of the executive director and the EPA that the formulation will achieve comparable or better reductions in emissions of NO_x and PM.

(1) For alternative diesel fuel formulations that use an additive to achieve reductions, the applicant shall provide to the executive director upon application, the identity, chemical composition, and concentration of each additive used in the formulation, and the test method by which the presence and concentration of the additive may be determined.

(2) If the alternative diesel fuel formulation has been demonstrated to the satisfaction of the executive director and the EPA to achieve comparable or better reductions in emissions of NO_x and PM under this subsection, then the executive director may issue an approval notification certifying that the alternative diesel fuel formulation may be used to satisfy the requirements of §114.312(a) of this title.

(A) The approval notification must identify the following specifications of the alternative diesel fuel formulation as approved under this subsection:

(i) the total aromatic hydrocarbon content, cetane number, or other parameters as appropriate and as determined in accordance with the test methods identified in subsection (a) of this section; or

(ii) for an alternative diesel fuel using an additive to achieve reductions, the identity and minimum concentration or treatment rate of the additive, the minimum specifications of the base fuel used in the approved formulation, and the test method or methods that must be used to satisfy the monitoring requirements of §114.316 of this title.

(B) The approval notification must assign an identification number to the specific approved alternative diesel fuel formulation.

(3) The demonstration required under this subsection may be satisfied using the Unified Model as described in the EPA staff discussion document, *Strategies and Issues in Correlating Diesel Fuel Properties with Emissions*, Publication Number EPA420-P-01-001, published July 2001, to demonstrate that the applicable fuel properties of the alternative diesel fuel formulation will achieve at least a 5.5% reduction in NO_x emissions from on-road diesel fuel for the year 2007, and at least a 6.2% reduction in NO_x emissions from non-road diesel.

(4) The demonstration required under this subsection may be satisfied by the verification of an alternative diesel fuel formulation by the Air Pollution Control Technologies Center, a center under the EPA's Environmental Technology Verification Program, and the EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program, demonstrating at least a 5.78% reduction in NO_x emissions when compared against a base diesel fuel with fuel properties within the ranges as described for nationwide average fuel in EPA's *Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel En-*

gines and Light Duty Gasoline Engines and Vehicles (Revision No. 03, September 2003).

§114.316. Monitoring, Recordkeeping, and Reporting Requirements.

(a) Every producer or importer that has elected to sell, offer for sale, supply, or offer for supply diesel fuel that may ultimately be used in counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates) is subject to the applicable requirements of this section.

(b) All records relating to low emission diesel (LED) sampling must contain a statement declaring whether the aromatic hydrocarbon content of the sample conforms to the basic standard as specified in §114.312(b) of this title (relating to Low Emission Diesel Standards), to a designated alternative limit (DAL) in accordance with §114.313 of this title (relating to Designated Alternative Limits), to a limit as accepted under §114.312(e) of this title, or whether the diesel fuel conforms to an alternative diesel fuel formulation approved under §114.312(f) of this title.

(c) Each producer or importer of a diesel fuel that conforms to §114.312(a) - (e) of this title shall sample and test for the aromatic hydrocarbon content and minimum cetane number in each final blend of LED that the producer or importer has produced or imported, by collecting and analyzing a representative sample of diesel fuel taken using the methodologies specified in §114.315 of this title (relating to Approved Test Methods). The producer or importer shall maintain, for two years from the date of each sampling, records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the aromatic hydrocarbon content and minimum cetane number. All diesel fuel produced by the producer or imported by the importer and not tested as LED by the producer or importer as required by this section will be deemed to exceed the standards specified in §114.312 of this title, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits.

(d) Each producer or importer of a diesel fuel that conforms to §114.312(f) of this title shall sample and test for the appropriate components of the alternative diesel fuel formulation as listed in the approval notification issued by the executive director under §114.315(c) or (d) of this title in each final blend of LED that the producer or importer has produced or imported, by collecting and analyzing a representative sample of diesel fuel taken from the final blend, using the methodologies specified in §114.315 of this title. If a producer or importer blends the diesel fuel components of the approved alternative diesel fuel formulation to produce a final blend of LED directly to pipelines, tank ships, railway tank cars, or trucks and trailers, the loading(s) must be sampled and tested for the appropriate components of the alternative diesel fuel formulation as approved by the executive director by the producer or importer or authorized contractor at a rate of one sample and test per 250,000 gallons of LED produced. The producer or importer shall maintain records showing the sample date, identity of blend sampled, container or other vessel sampled, final blend volume, and the content of the appropriate fuel components for two years from the date of each sampling. All diesel fuel produced by the producer or imported by the importer and not tested as LED by the producer or importer as required by this section will be deemed to exceed the standards specified in §114.312 of this title, unless the producer or importer demonstrates that the diesel fuel meets those standards and limits.

(e) If the alternative diesel fuel formulation being sampled and tested under subsection (d) of this section contains an additive system, the final blend must be sampled and tested for the content of the appropriate fuel components of the base fuel and additive as listed in the approval notification issued by the executive director under §114.315(c) or (d) of this title, and the producer or importer or authorized contractor shall maintain records showing that sufficient additive was added

to maintain the appropriate additive concentration as approved by the executive director. If the additive is approved by the executive director for use with diesel fuel produced to comply with the fuel content standards specified in 40 Code of Federal Regulations §80.520, the testing for the content of the fuel components of the base fuel is not required.

(f) A producer or importer subject to the requirements of this division shall provide to the executive director any records required to be maintained by the producer or importer in accordance with this section within 15 days of a written request from the executive director, if the request is received before expiration of the period during which the records are required to be maintained. Whenever a producer or importer fails to provide records regarding a final blend of LED in accordance with the requirements of this section, the final blend of diesel fuel will be presumed to have been sold by the producer or importer in violation of the standards specified in §114.312 of this title, to which the producer or importer has elected to be subject.

(g) All parties in the distribution chain (producer, importer, terminals, pipelines, truckers, rail carriers, and retail fuel dispensing outlets) subject to the provisions of §114.312 of this title shall maintain copies or records of product transfer documents for a minimum of two years and shall upon request, make such copies or records available to representatives of the commission, United States Environmental Protection Agency, or local air pollution agency having jurisdiction in the area. The product transfer documents must contain, at a minimum, the following information:

- (1) the date of transfer;
- (2) the name and address of the transferor;
- (3) the name and address of the transferee;
- (4) in the case of transferors or transferees who are producers or importers, the registration number of those persons as assigned by the commission under §114.314 of this title (relating to Registration of Diesel Producers and Importers);
- (5) the volume of diesel fuel being transferred;
- (6) the location of the diesel fuel at the time of transfer; and
- (7) one of the following certification statements, as appropriate:

(A) "This product is Texas low emission diesel and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel."; or

(B) "This product may not be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel without further processing."; or

(C) "This product has been produced under a TCEQ approved alternative emission reduction plan and may be used as fuel for diesel engines in any Texas county requiring the use of low emission diesel fuel."

(h) For each final blend that is sold or supplied by a producer or importer from the party's production facility or import facility, and that contains volumes of diesel fuel that the party has produced and imported and volumes that the party neither produced nor imported, the producer or importer shall establish, maintain, and retain adequately organized records containing the following information.

(1) The volume of diesel fuel in the final blend that was not produced or imported by the producer or importer, the identity of the person(s) from whom such diesel fuel was acquired, the date(s) that it was acquired, and the invoice(s) representing the acquisition(s).

(2) The aromatic hydrocarbon content and the cetane number of the volume of diesel in the final blend that was not produced or imported by the producer or importer, determined either by:

(A) sampling and testing by the producer or importer of the acquired diesel fuel represented in the final blend; or

(B) written results of sampling and test of the diesel fuel supplied by the person(s) from whom the diesel fuel was acquired.

(3) A producer or importer subject to this subsection shall establish such records by the time the final blend triggering the requirements is sold or supplied from the production or import facility, and shall retain such records for two years from such date. During the period of required retention, the producer or importer shall make any of the records available to the executive director upon request.

(i) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED in accordance with §114.312 of this title shall provide a quarterly summation report to the executive director no later than the 45th day following the end of the calendar quarter. The quarterly report must provide, at a minimum, the information required to be collected by subsections (c) - (e), and (h) of this section and a reconciliation of the quarter's transactions relative to the requirements of subsections (c) - (e), and (h) of this section. Updates or revisions to estimated transaction volumes required by subsections (c) - (e) of this section must be included in this report.

(j) Each producer or importer electing to sell, offer for sale, supply, or offer to supply LED under §114.312(e) of this title shall provide to the executive director, as applicable, a copy of the executive order issued by the California Air Resources Board (CARB) for the Certified Diesel Fuel Formulation used to produce the LED or documentation demonstrating that the LED has been produced to meet all specifications for diesel fuel under regulations adopted by the CARB, except for those approved for small refinery compliance, that were in effect as of January 18, 2005, and shall comply with the requirements of subsections (c) and (h) of this section using the fuel specifications for aromatic hydrocarbon and cetane set by this executive order or regulations.

(k) Each producer electing to sell, offer for sale, supply, or offer to supply diesel fuel in accordance with §114.318 of this title (relating to Alternative Emission Reduction Plan) shall comply with the sampling and testing requirements of subsections (d) and (e) of this section for the appropriate fuel components of the diesel upon which the projected emission reductions were based. Each producer shall provide a quarterly report to the executive director no later than the 45th day following the end of the calendar quarter. The quarterly report must provide, at a minimum, the following information:

(1) the volume of diesel fuel produced by the producer that is subject to the provisions of the alternative emission reduction plan as approved by the executive director;

(2) the volume of diesel fuel that was not produced by the producer but was sold or supplied by the producer in the counties listed in §114.319 of this title and is subject to the provisions of the alternative emission reduction plan as approved by the executive director and the identity of the persons(s) from whom such diesel fuel was acquired and the date(s) that it was acquired. The producer shall retain records of the invoice(s) representing the acquisition(s) for two years from such date; and

(3) the information required to be collected in accordance with the sampling and testing requirements of this subsection and a reconciliation of the quarter's transactions relative to the requirements of this subsection for the appropriate fuel components of the diesel fuel

that the projected emission reductions demonstrated in the producer's alternative emission reduction plan were based upon.

§114.318. Alternative Emission Reduction Plan.

(a) Diesel fuel that is sold, offered for sale, supplied, or offered for supply by a producer who submits an alternative emission reduction plan in accordance with subsection (b) of this section that is approved by the executive director will be considered in compliance with the requirements of §114.312(a) of this title (relating to Low Emission Diesel Standards).

(b) An alternative emission reduction plan must demonstrate that the emission reductions associated with compliance of this division (relating to Low Emission Diesel) that are attributable to the volume of diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer to the affected counties listed under §114.319(b) of this title (relating to Affected Counties and Compliance Dates) each year will be achieved through an equivalent substitute fuel strategy in accordance with either one or a combination of the following procedures.

(1) A producer shall demonstrate for each specific group of affected counties listed under each paragraph of §114.319(b) of this title, using the Unified Model as described in the United States Environmental Protection Agency (EPA) staff discussion document, *Strategies and Issues in Correlating Diesel Fuel Properties with Emissions*, Publication Number EPA420-P-01-001, published July 2001, and using only the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in the specific counties listed in each group to determine the average fuel properties to be used for the demonstration applicable to each group of affected counties, the following:

(A) the average fuel properties of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 5.5% reduction in oxides of nitrogen (NO_x) emissions for the year 2007; and

(B) the average fuel properties of all non-road diesel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 6.2% reduction in NO_x emissions.

(2) A producer shall demonstrate for the counties listed in §114.319(b)(4) of this title, the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction using the following methodology or the methodology specified in paragraph (3) of this subsection.

(A) The credits from early gasoline sulfur reduction as determined in subparagraph (C) of this paragraph and paragraph (3)(A) of this subsection will be based on the actual level of sulfur in a producer's gasoline that was below the sulfur levels identified in the EPA's MOBILE6 model as the default refinery average and cap for conventional gasoline in each applicable year and as reported by the producer to EPA in accordance with 40 Code of Federal Regulations (CFR) §80.105 for 2003, and 40 CFR §80.370 for 2004 and 2005.

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in calendar years 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the applicable gasoline-to-diesel offset ratios calculated under subparagraph (D) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title to demonstrate compliance through December 31, 2010.

(C) The credits from early gasoline sulfur reduction will be determined based on the level of sulfur reduction in each year using

the following methodologies and subject to the applicable gasoline-to-diesel offset ratios determined using the methodology specified under subparagraph (D) of this paragraph.

(i) Methodology 1 - valid only for 2003 gasoline sulfur values between 259 parts per million (ppm) and 30 ppm.
Figure: 30 TAC §114.318(b)(2)(C)(i)

(ii) Methodology 2 - valid only for 2004 gasoline sulfur values between 121 ppm and 30 ppm.
Figure: 30 TAC §114.318(b)(2)(C)(ii)

(iii) Methodology 3 - valid only for 2005 gasoline sulfur values between 92 ppm and 30 ppm.
Figure: 30 TAC §114.318(b)(2)(C)(iii)

(D) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005, must be divided by the gasoline-to-diesel offset ratio determined in accordance with the following methodology.
Figure: 30 TAC §114.318(b)(2)(D)

(3) A producer shall demonstrate for the counties listed in §114.319(b)(4) of this title the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction using the percentage of NO_x emission reductions attributed to on-road diesel for 2007 calculated with the Unified Model as described in paragraph (1) of this subsection, and the average fuel properties of the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in these specific counties, to determine the applicable offset ratio to be applied to the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005.

(A) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005, must be divided by the gasoline-to-diesel offset ratio determined in accordance with the following methodology.
Figure: 30 TAC §114.318(b)(3)(A)

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in calendar years 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the applicable gasoline-to-diesel offset ratios as calculated in accordance with subparagraph (A) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title for compliance through December 31, 2010.

(4) A producer shall demonstrate for the counties listed in §114.319(b)(1) or (2) of this title, respectively, the total number of barrels of noncompliant diesel fuel that may be offset by credits from the residual effects of early gasoline sulfur reduction on the NO_x emission reduction efficiencies of catalytic converters installed in gasoline-powered motor vehicles by using the following methodology.

(A) The credits from the residual effect of early gasoline sulfur reduction may only be generated by the volume of reformulated gasoline supplied by the producer in 2004 and 2005 to the counties listed in §114.319(b)(1) or (2) of this title, that had an average sulfur level reported by the producer to EPA in accordance with 40 CFR §80.370 that was below the sulfur level of 92 ppm in 2004, and 77 ppm in 2005.

(B) The number of barrels of noncompliant diesel fuel that may be offset by credits from the residual effects of early gasoline sulfur reduction will be determined by dividing the actual number of barrels of lower sulfur gasoline determined to be eligible to generate credit in accordance with subparagraph (A) of this paragraph by the following gasoline-to-diesel offset ratio as applicable.

(i) The gasoline-to-diesel offset ratio for eligible lower sulfur gasoline supplied to the counties listed in §114.319(b)(1) of this title will be 32.0 for calendar years 2006 through 2008.

(ii) The gasoline-to-diesel offset ratio for eligible lower sulfur gasoline supplied to the counties listed in §114.319(b)(2) of this title will be 66.0 for calendar years 2006 through 2008.

(C) The credits from the residual effects of early gasoline sulfur reduction as determined in accordance with subparagraph (B)(i) or (ii) of this paragraph can only be used in the counties listed in §114.319(b)(1) or (2) of this title, respectively, for compliance through December 31, 2008.

(c) All alternative emission reduction plans approved by the executive director prior to December 16, 2005, will expire on December 31, 2006, with the following exception. The executive director may allow a producer operating under an alternative emission reduction plan approved by the executive director prior to December 16, 2005, to continue to operate under that plan for a limited time beyond December 31, 2006, if all the following conditions are demonstrated to the satisfaction of the executive director:

(1) the producer's alternative emission reduction plan relied on the use of an alternative diesel formulation that has not been approved by the executive director under §114.315(c) of this title (relating to Approved Test Methods);

(2) the producer has submitted an application to the Air Pollution Control Technologies (APCT) Center, a center under the EPA's Environmental Technology Verification (ETV) Program, and the EPA's Office of Transportation and Air Quality's Voluntary Diesel Retrofit Program to pursue verification of this alternative diesel fuel formulation to demonstrate that it will achieve at least a 5.78% reduction in NO_x emissions when compared against a base diesel fuel with fuel properties within the ranges as described for nationwide average fuel in EPA's *Verification Protocol for Determination of Emissions Reductions Obtained by Use of Alternative or Reformulated Liquid Fuels, Fuel Additives, Fuel Emulsions, and Lubricants for Highway and Nonroad Use Diesel Engines and Light Duty Gasoline Engines and Vehicles* (Revision No. 03, September 2003);

(3) the producer has a contract with the APCT Center to perform the verification testing that is signed by both parties and paid in full by September 1, 2006; and

(4) the emissions testing as specified under an ETV test plan approved by both the APCT Center and EPA is completed before December 1, 2006.

(d) An alternative emission reduction plan must be approved by the executive director prior to the use of that plan for compliance with the requirements of this section.

(e) The executive director shall approve or disapprove alternative emission reduction plans that have been submitted by producers in accordance with subsection (b) of this section within 45 days of submittal.

(f) Alternative emission reduction plans submitted to the executive director in accordance with subsection (b) of this section must contain sufficient documentation to validate the average diesel fuel properties used in accordance with subsection (b)(1) or (2) of this sec-

tion and, as appropriate, the sulfur properties and volumes of the gasoline that is being used to generate credit in accordance with subsection (b)(3) or (4) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. OPERATIONAL CONTROLS FOR MOTOR VEHICLES

DIVISION 2. LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

30 TAC §114.512, §114.517

The Texas Commission on Environmental Quality (commission or TCEQ) adopts the amendments to §114.512 and §114.517 *without changes* to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7828) and will not be republished.

The amended sections as adopted will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopts these revisions to Chapter 114, Control of Air Pollution from Motor Vehicles, and to the SIP in order to reduce ground-level ozone from fuel combustion resulting from motor vehicle idling.

The concept of an early, voluntary eight-hour air quality plan, or early action compact (EAC), was endorsed by EPA Region 6 in June 2002 then slightly modified and made available nationally in November 2002. The EACs are tailored to local needs and driven by local decisions. A key point of an EAC is the flexibility afforded areas to select emission reduction measures. Based on quality science, signatories may choose the combination of measures that meet both local needs and emission reduction targets. Each EAC recognizes that not every entity within the EAC area will implement every measure.

Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations rule, was proposed at the request of the local air quality planning organization in the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards. The rule package also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures were needed to achieve or maintain

attainment of the federal eight-hour ozone standard in the future. The rules were adopted on November 17, 2004.

The December 18, 2002, EAC committed the commission to incorporate a Clean Air Action Plan for the Austin area into the SIP and adopt a revised SIP by December 31, 2004. The idling restriction rule was part of that attainment demonstration. While the Austin Metropolitan Statistical Area (MSA) was monitoring attainment with the eight-hour ozone standard, future monitoring could have shown nonattainment. Therefore, members of the Austin MSA worked to ratify a memorandum of agreement (MOA) with the TCEQ that would allow them to enforce the idling restriction rule in their region. The Locally Enforced Idling Restriction MOA was signed by the commission and members of the Austin EAC area on August 1, 2005. Members of the Austin EAC area signing the MOA included the counties of Bastrop, Caldwell, Hays, Travis, and Williamson and the cities of Austin, Bastrop, Elgin, Lockhart, Luling, Round Rock, and San Marcos.

In meetings with officials of the Austin EAC to develop the idling rule MOA, concerns arose regarding language in the locally enforced idling restrictions. Austin EAC members voiced concern that parts of §114.517, Exemptions, were ambiguous and needed revision. Members of the Austin EAC felt that §114.517(7) and (8) could be misinterpreted to mean that a transit vehicle could idle for a total of one hour. There was also concern that the commission's rule conflicted with Texas Department of Transportation (TxDOT) guidelines for vehicle idling by employees. Austin EAC members brought to the commission's attention TxDOT's policy regarding idling. The guidelines advise employees to idle their vehicles to operate the air conditioner or heating system for employee health and safety while they perform an essential job function related to roadway construction or maintenance. In many instances on-road and off-road vehicles at roadway construction sites must remain in idle mode during normal operations. The commission agrees with the Austin EAC members that the locally enforced idling restrictions should be revised in light of these concerns. At the request of the Austin EAC members, the commission adopts revisions to the locally enforced motor vehicle idling rule.

The commission also adopts revisions to the idling rule to conform to legislation passed in 2005. On May 16, 2005, the 79th Legislature passed House Bill (HB) 1540, amendments to Texas Health and Safety Code, Chapter 382, Subchapter B, §382.0191, Idling of Motor Vehicle While Using Sleeper Berth. The bill, effective September 1, 2005, states that the "commission may not prohibit or limit the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period." In addition, the bill states that, "no driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation," or else be subject to a fine not to exceed \$500.

This rulemaking amends the rule on idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction in nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions, which is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These idling limits will lower NO_x emissions and other

pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

Currently, there are no federal regulations governing idle time for motor vehicles. Therefore, the state has the authority to control motor vehicle idling. The requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the time allowed for motor vehicle idling.

EPA methodology assessing the benefits of this NO_x emission reduction strategy demonstrated that by the year 2007 the idling limits will reduce NO_x emissions in the Austin EAC area by 0.67 tons per day. The commission believes that these amendments to the rule will not reduce the amount of reductions demonstrated.

SECTION BY SECTION DISCUSSION

The amendment to §114.512, Control Requirements for Motor Vehicle Idling, amends the existing paragraph as subsection (a). The amendment to §114.512 also adds subsection (b), which establishes that, "no driver of a motor vehicle may use the vehicle's sleeper berth for a government-mandated rest period if the vehicle is within a school zone or within 1,000 feet of a public school during its hours of operation." Any offense under subsection (b) is punishable by a fine not to exceed \$500. The requirements under subsection (b) expire on September 1, 2007, just as in HB 1540.

Adopted §114.517(1) provides an exemption for a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, but only if before September 1, 2007, it does not contain a sleeping berth. That is to say, after September 1, 2007, any vehicle that has a gross vehicle weight rating of 14,000 pounds or less will be exempt from any idling restriction. Until then, these vehicles that contain a sleeper berth are subject to the rule. The amendment to §114.517(4) replaces the phrase, "not including" with "other than." The amendment to §114.517(7) replaces the phrase, "comfort/safety" with "comfort and safety." The amendment to §114.517(4) also adds the phrase, "or public." This change is necessary to combine the exemptions in §114.517(7) and (8), thereby clarifying the intent of the rule. The amendment to §114.517(8) eliminates language exempting idling up to 30 minutes for, "the primary propulsion engine of a motor vehicle used for transit operations." The amendment to §114.517(8) adds a new exemption for, "the primary propulsion engine of a motor vehicle being used to operate the air conditioning or heating system for employee health or safety when the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance." One reason this exemption has been added is because in most types of construction equipment (e.g., dump trucks, etc.) the operator must remain in the vehicle throughout the workday for both operational and safety reasons. Furthermore, most heavy-duty, on-road vehicles such as dump trucks, asphalt maintenance units, and aerial devices have power takeoff units that operate ancillary equipment attached to the vehicle and that are powered by the primary propulsion engine. Therefore, the primary propulsion engine must remain in an idling mode. Adopted §114.517(11) allows for the exemption of, "the primary propulsion engine of a motor vehicle when it is necessary for the driver to power a heater or air conditioner while he/she is using the vehicle's sleeper berth for a government-mandated rest period." Section 114.517(11) expires on September 1, 2007. This language has been added in order to ensure that the rule is compliant with the requirements set forth in HB 1540.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the rulemaking meets the definition of a "major environmental rule" as defined in the statute, it does not meet any of the four applicability requirements listed in §2001.0225(a). The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. Specifically, this rulemaking amends the rules that limit heavy-duty motor vehicle idling within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. The amendments clarify current rule requirements and implement the new requirements of HB 1540. Currently, there are no federal regulations governing idle time for motor vehicles. This rulemaking action therefore does not exceed a standard set by federal law. The amendments are needed to implement state law, and the rulemaking therefore does not exceed an express requirement of state law. The amendments do involve a compact, which is an agreement or contract between the state and an agency or representative of federal government to implement a state and federal program, however, the amendments do not exceed the requirements of that compact. This rulemaking helps the Austin EAC area continue to meet the milestones of the compact and demonstrate continuing attainment of the eight-hour ozone standard. Finally, this rulemaking was not developed solely under the general powers of the agency. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225 does not apply, and a regulatory impact analysis is not required.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means: 1) a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or 2) a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a taking impact analysis for this rulemaking action. Promulgation and enforcement of the rules do not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules

are not a government action that affects private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the adopted rules do not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that this rulemaking is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore, requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of this rulemaking action. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

PUBLIC COMMENT

The commission held a hearing on this proposal on January 10, 2006, at 10:00 a.m. at the Texas Commission on Environmental Quality, 12100 North I-35, Building E, Room 201S, in Austin, Texas, but no oral comments were received. The public comment period closed at 5:00 p.m. on January 17, 2006. Written comments were received from the Capital Area Council of Governments (Capital Area COG), Houston Regional Group of Sierra Clubs (Sierra Club-Houston), and EPA.

RESPONSE TO COMMENTS

Capital Area COG and Sierra Club-Houston commented that they support the proposed amendments and corresponding revisions to the SIP. Capital Area COG commented that the rules clarified language in the current exemptions and addressed concerns related to TxDOT's employee idling policy.

RESPONSE

The commission appreciates the support for the locally enforced motor vehicle idling limitations and the proposed amendments. The commission agrees that the amendments will clarify idling requirements and provide for consistency with employee safety idling policies and regulations.

EPA commented that the revision to §114.517(1), which amended the exemption to include vehicles that do not have sleeper berths and the addition of paragraph (11) which exempts a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period will weaken the SIP rules that it approved in 2005.

EPA commented that it will not be able to approve these adopted amendments into the SIP unless the commission can provide substitute reductions or modeling to show that attainment can be met without the credits affected by these changes. EPA com-

ments further that programs in an approved SIP must still be enforced unless EPA approves a SIP revision.

RESPONSE

The commission disagrees with the comment that these amendments weaken the idling requirements and thus the SIP. The commission is committed to implementing idling restrictions contained in the EPA-approved SIP. The purpose of the adopted amendments is to clarify idling restrictions for affected vehicle owners and operators and provide local jurisdictions with clearer and more consistent enforcement responsibilities, and not to weaken the idling requirements. The amendments and new exemption also ensure that the rulemaking is consistent with statute provisions found in HB 1540, 79th Legislature, 2005, and will expire September 1, 2007.

To date, the commission has only taken credit for idling restrictions in the Austin EAC SIP. The commission has made a commitment in the Austin EAC SIP to make up reduction shortfalls from idling restriction rules through Texas Emission Reduction Program project reductions, if needed. However, a shortfall is not anticipated. In the SIP, the commission used EPA's *Guidance for Qualifying and Using Long Duration Truck Idling Emission Reductions in State Implementation Plans and Transportation Conformity* to determine that the maximum benefit from idling restrictions placed on diesel-powered "18-wheeler" vehicles would be a 0.67 tons per day reduction of NO_x for the five-county Austin EAC area.

Based upon the fact that the Austin EAC includes the Texas Emission Reduction Program as a backup measure for any idling reduction shortfall, and the expiration date of September 1, 2007, for the amendments added from HB 1540, the commission disagrees that new substitute reductions or modeling need to be developed to monitor continued attainment as a result of this rulemaking. This is especially the case for the Austin EAC area since the five-county area is currently designated an attainment area, and if monitored nonattainment in the future could not be designated nonattainment until December 31, 2007, at the earliest. The commission did not revise the rule in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also adopted under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.0191, which authorizes use of a sleeping berth for a government-mandated rest period; and §382.039, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The adopted amendments implement TCAA, §§382.002, 382.011, 382.012, 382.019, 382.0191, and 382.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.3

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §421.3, concerning minimum standards set by the TCFP, in Chapter 421, entitled Standards for Certification. The amendment is adopted without changes to the proposed text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1623) and will not be republished. The adopted amendment adds functional position descriptions for Fire Service Instructor I, II, and III, which had not previously existed in §421.3.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, which provides the TCFP with the authority to prescribe the means of presenting evidence of the fulfillment of the qualifications for appointment as fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.032.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3821



CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.13

The Texas Commission on Fire Protection (TCFP) adopts new §425.13, concerning individuals serving as coordinators prior to March 1, 2006, in Chapter 425, entitled Fire Service Instructors. The new rule is adopted without changes to the proposed text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1624) and will not be republished. The purpose of the adopted new rule is to provide, for a limited period of time, a qualifying path to advance to Fire Service Instructor III certification for those individuals serving as facility coordinators prior to March 1, 2006.

The adopted new rule provides that for one year only from March 1, 2006, individuals who possess a Fire Service Instructor II certification will be eligible to be certified for Fire Service Instructor III after meeting certain requirements. The individual must submit an application for certification to the commission and provide documentation from the head of a fire department or other organization that the individual: 1) has been assigned or is currently assigned as a chief training officer or coordinator of record; and 2) has demonstrated the minimum job performance requirements of National Fire Protection Association (NFPA) Standards 1041, entitled *Standard for Fire Service Instructor Professional Qualifications*.

The TCFP has determined this new rule to be in compliance with Texas Government Code §419.022(b).

No comments were received from the public regarding the proposed new rule.

The new rule is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200602417

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Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3821



CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §431.11 and §431.201, concerning minimum

standards for arson investigator certification and fire investigator certification, in Chapter 431, entitled Fire Investigation. The amendments are adopted without changes to the proposed text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1625), and will not be republished. The purpose of the adopted amendments is to remedy a problem which currently exists in which individuals who hold certification as arson investigators would lose their arson investigator certification if their commission as a peace officer is no longer sponsored by a legal jurisdiction. The adopted amendments will remove, for these individuals, the necessity of going through fire investigator training and testing again, as it is essentially the same training and testing they had already successfully completed to become an arson investigator.

The adopted amendment to §431.11, Minimum Standards for Arson Investigator Certification for Law Enforcement Personnel, adds a provision that commission-certified fire investigators will qualify for similar-level arson investigator certification if they are a law enforcement officer employed or commissioned by a law enforcement agency as a peace officer, and if they are designated as an arson investigator by an appropriate local authority.

The adopted amendment to §431.201, Minimum Standards for Fire Investigation Personnel, changes the procedure by which individuals who have previously held arson investigator certification, but no longer hold a current commission as a peace officer, would be able to qualify for fire investigator certification of a similar level. As the rule is currently written, such an individual would have to submit an application for certification form and fee. The adopted change will automatically identify such an individual as a fire investigator in the commission's database, and only require the application form and fee if the individual wished to obtain a printed certificate.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

No comments were received from the public regarding the proposed amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.11

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.201

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-3821



CHAPTER 437. FEES

37 TAC §§437.1, 437.3, 437.5, 437.7, 437.11, 437.13

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§437.1, 437.3, 437.5, 437.7, 437.11, and 437.13, in Chapter 437, entitled Fees. The amendments are adopted without changes to the proposed text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1626) and will not be republished. The purpose of the adopted amendments is to simplify and clarify fee submission procedures and to provide a penalty to be assessed for paying fees with a check that is returned for insufficient funds.

The adopted amendment to §437.1 adds a provision that fees submitted in the form of a check that is returned for insufficient funds will invalidate the certification, seal or test for which the fees were collected.

The adopted amendments to §§437.3, 437.5, 437.7, 437.11, and 437.13 remove the requirement that fees submitted for different purposes (certifications, renewals, purchasing a manual, copying fees, etc.) not be combined when submitted. The amendments will allow fees to be combined into a single payment.

In addition to the deleted provision referred to in the previous paragraph, the adopted amendment to §437.13 also clarifies in subsection (a) that the non-refundable fee of \$15 charged for ex-

aminations administered by the commission is a processing fee; and adds performance skill examinations to those examinations for which the processing fee shall be charged. These changes in subsection (a) make subsection (c) obsolete, and it is being deleted.

The TCFP has determined the amendments to be in compliance with Texas Government Code, §419.022(b) and §419.026(a).

No comments were received from the public on the proposed amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the TCFP with authority to set and collect a fee of not more than \$35 for each certificate that the TCFP issues or renews.

Texas Government Code, §419.008 and §419.026 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2006.

TRD-200602420

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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Proposal publication date: March 10, 2006

For further information, please call: (512) 936-3821



CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.9

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §441.9, concerning continuing education for aircraft rescue fire fighting personnel, in Chapter 441, entitled Continuing Education. The amendment is adopted without changes to the proposed text published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1628) and will not be republished. The purpose of the adopted amendment is to reflect a reference change in Federal Aviation Regulation (FAR) 139.319.

The adopted amendment changes the reference to FAR 139.319 from "(j)(2) and (3)" to "(i)(2) and (3)."

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

No comments were received from the public regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities

ties of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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Proposal publication date: March 10, 2006

For further information, please call: (512) 936-3821



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 18. MOTOR CARRIERS

The Texas Department of Transportation (department) adopts amendments to §18.2, definitions, §§18.13, 18.14, 18.16, 18.17 and repeal of §18.18, concerning motor carrier registration, and amendments to §§18.51, 18.58, and 18.63 - 18.65, concerning consumer protection, and §§18.82, 18.87 - 18.93, and 18.96, concerning vehicle storage facilities. The repeal of §18.18, and amendments to §§18.17, 18.51, 18.58, 18.63, 18.64, 18.82, 18.87 - 18.91, 18.93 and 18.96 are adopted without changes to the proposed text as published in the December 2, 2005 issue of the *Texas Register* (30 TexReg 8019) and will not be republished. The amendments to §§18.2, 18.13, 18.14, 18.16, 18.65 and 18.92 are adopted with changes to the proposed text as published in the December 2, 2005 issue of the *Texas Register* (30 TexReg 8019). Section 18.32 is withdrawn.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

The adopted amendments and repeal are necessary to implement the provisions of House Bills 480, 1018, 1584, 2630, and 2702 of the 79th Legislature, Regular Session, 2005; update statutory references; clarify existing information; and address the implementation of online registration applications.

House Bill 480 amended Occupations Code, §2303.155, to increase the notification charge a vehicle storage facility operator can charge, from \$32 to \$50, and to increase the daily storage fee of a vehicle by \$5. House Bill 480 added Occupations Code, §2303.158 to clarify the condition under which a person claiming to be the vehicle owner of a towed vehicle can access their vehicle's interior storage in order to prove ownership.

House Bill 1018 addressed commercial school bus regulations, providing an additional insurance level for certain commercial school buses and requiring a minimum liability insurance of at least \$500,000 combined single limit.

House Bill 2630 addressed issues with vehicle storage facilities. It requires the name, address, and telephone number of the justice court be included in the contents of the notices provided to

the owners of towed vehicles. House Bill 2630 also amends Occupations Code, §2303.152(a) and (e), to allow vehicle storage facility operators to issue notice by publication for vehicles not registered in Texas for nonconsent storage when a vehicle owner's identity or vehicle's state of registration cannot be determined. It requires vehicle storage facility operators to notify law enforcement when a vehicle has been abandoned at a vehicle storage facility. House Bill 2630 also adds language to prohibit vehicle storage facilities from charging additional fees related to storage other than fees set forth in statute.

House Bill 480, House Bill 1584 and House Bill 2630 all added language to require a vehicle storage facility operator to accept either electronic checks, debit cards, or credit cards as an alternative form of payment for vehicle storage charges.

House Bill 2702, Article 6, changed the alternative household goods carriers' registration requirements previously based on vehicle weight. The rules as proposed eliminated all references to Type A and Type B household goods carriers. The rule as adopted has been modified regarding Type B household goods carriers to allow the department time to further study the issue of minimum vehicle liability insurance requirements for household goods carriers who previously qualified as Type B carriers. The adopted rules re-establish Type B carriers to allow for the continuation of the current registration format with regard to vehicle liability insurance requirements. Other changes to household goods carriers remain as proposed. The department will propose additional rules at the conclusion of the study to address liability insurance requirements.

New §18.2(6)(A)(vi) expands the definition of commercial motor vehicle to include any vehicle transporting household goods for compensation, as required by House Bill 2702. The adopted amendment to §18.2(6)(B)(ii) updates the legal reference for cotton vehicle registration and the adopted amendment to §18.2(7) adds a new definition for "commercial school bus" to comply with House Bill 1018. The definition of Type B household goods carriers, §18.2(51), is reinstated in the adopted rules to allow for the continuation of a separate registration process for carriers that meet the definition.

Section 18.13(a)(3), relating to application for motor carrier registration, deletes the reference to the application to address the implementation of a new internal web-based registration process. The online registration process will streamline the application procedures and allow for a more efficient system.

Section 18.13 is also changed from the proposed version to accommodate the separate registration process for Type B household good carriers. The rule as adopted reinstates the current language of the rule regarding the registration process and vehicle liability insurance.

Adopted §18.14 reinstates the current language regarding the continuation of Type B carriers. With this change, Type B carriers do not have a set expiration date.

Section 18.14(b)(1), relating to expiration and renewal of commercial motor vehicle registration, allows the department to provide renewal notices by electronic mail to address the implementation of new online registration applications.

The language in §18.16(a), regarding the vehicle liability insurance requirements, has been changed from the proposed language, reinstating the current language of the rule.

Section 18.16(a), relating to insurance requirements, including numbered item 1, and subsections 18.16(b), (c), (f), and (h),

comply with the requirements of House Bill 2702 regarding commercial household goods carriers. All references to letters of credit and the process for acceptance have been removed in the adopted language. The adopted rule also deletes references to surety bonds as they do not apply to motor carriers that are required to register including all household goods carriers. All household goods carriers are required to meet the same cargo and workers compensation insurance requirements. In addition, §18.16(c)(1) is adopted with changes to clarify the existing language.

Numbered item 5 is added to the figure §18.16(a) to comply with the requirements of House Bill 1018 regarding commercial school buses. The adopted rule sets the minimum insurance level at \$500,000 as required by the statute. The remaining items are renumbered accordingly. The word "of" is changed to "or" in renumbered item 11 of the figure to correct a grammatical error.

Section 18.17, Single State Registration System, addresses implementation of a new online Single State Registration System (SSRS) and clarifies methods used to send SSRS renewal applications to customers. The deletion of language in §18.17(j)(6) eliminates duplicate insurance filing. The new system connects directly with the Federal Motor Carrier Safety Administration (FMCSA), therefore, it is no longer necessary to have the motor carrier file the insurance information with both entities.

Section 18.18, Temporary Registration of International Motor Carriers, is repealed to comply with 49 CFR, Parts 365 and 385, effective March 19, 2002. The federal regulations now require that motor carriers from Mexico obtain operating authority through the FMCSA. With the federal change, temporary registration stamps are no longer necessary.

Section 18.58(c)(1)(B), relating to moving services contract - options for carrier limitation of liability, changes the language to be consistent with the provisions of the household goods carriers contract terms and conditions used in interstate movements.

Section 18.82(8), Definitions (Main entrance), reflects a recent administrative decision to clarify that a vehicle storage facility's main entrance is located at the point where a public road meets private property leading to the vehicle storage facility. The adopted change will help address problems consumers have in locating the facility.

New §18.82(15), Vehicle transfer, is defined as "any movement of a vehicle out of a VSF, prior to its release as prescribed in §18.92(a)". Currently, this term is interpreted in a way that limits the release of a vehicle to a person other than another VSF.

Section 18.87(b)(2), relating to notifications regarding towed vehicles, clarifies that the notification procedures apply to vehicles not registered in Texas. The amendment to §18.87(b)(2)(B) allows vehicle storage facilities to utilize publication to notify the owner of the vehicle if the vehicle does not display a license plate or vehicle inspection certificate and the storage facility cannot determine ownership and lien holder information. This change is necessary to comply with House Bill 2630.

Section 18.89, Notice of Complaint Procedure, requires the notice of complaint procedures be included on the front page of the bill for service. This is to ensure that the information is accessible to the consumer.

Section 18.90, Rights of Owner or Authorized Representative, is amended to comply with House Bill 480 regarding access to a vehicle's interior to prove ownership.

Section 18.91(b), pertaining to facility requirements, adds a new requirement that VSF operators provide a consumer with safe unobstructed access to a vehicle in order to establish ownership, and clarifies signage requirements.

Section 18.92, Technical Requirements, implements House Bill 2630 regarding the requirement that the vehicle storage facility provide information on the justice court that has jurisdiction and the law enforcement agency that authorized the tow.

Section 18.92 requires the acceptance of new methods of payment for nonconsent storage as required by House Bill 480, House Bill 2630, and House Bill 1584. The vehicle storage facility is required to accept either electronic checks, debit cards or credit cards as an alternative form of payment for fees associated with the towing and storage of the vehicle.

Section 18.92 prohibits a vehicle storage facility from refusing to release a vehicle impounded for evidentiary or examination purpose because a law enforcement agency has not paid the cost of towing and storage. In addition, the section is amended to comply with 37 TAC, §4.16, that prohibits the release of a commercial motor vehicle until delinquent penalties have been paid by the motor carrier.

Amendments to §18.93, Storage Fees and Charges, implement House Bills 480 and 2630 regarding fee increases and charge restrictions.

Amendments to §18.96(c), pertaining to disposal of certain vehicles, implements House Bill 2630 regarding notification to law enforcement of a vehicle abandoned at a vehicle storage facility.

COMMENTS

The department received comments regarding the proposed rule during the comment period from the Texas Towing & Storage Association, and Angenend & Augustine on behalf of Southwest Movers Association. A summary of the comments and the department's responses follow.

Comment

One commenter suggested a deletion of the last sentence of §18.92(a)(7) which stated "The licensee cannot charge the law enforcement agency for costs that accrued after the agency authorized the release of the vehicle." The change was requested due to arrangements some VSF operators have with law enforcement to store vehicles and their belief that the proposed language could have an impact on these arrangements.

Response

The department agrees with the suggested change and deletes the last sentence of §18.92(a)(7) which was added in the proposed rules. Code of Criminal Procedure, Article 18.23 does not require a law enforcement agency to pay the cost of storing a motor vehicle after the date the law enforcement agency authorizes the VSF to release the vehicle to the owner. The sentence was proposed for clarification purposes, however, removing the proposed sentence does not hinder a VSF from complying with the law nor does it limit the VSF from collecting the applicable charges.

Comment

One commenter suggests a new statement indicating that law enforcement "owes" the VSF when law enforcement has a hold on a vehicle, suggesting that law enforcement does not need a statement that protects them from a VSF.

Response

The department does not agree with this suggestion. This is not addressed in the statute and the department does not regulate law enforcement agencies.

Comment

One commenter suggests a change to §18.16(c)(1) and §18.65(a) regarding the use of the word "municipality." The commenter suggested inserting the word "incorporated" before the word "municipality" or suggested that the prior rule language be revised. The prior language "incorporated city, town, or village" includes the three classes of Texas municipalities.

Response

The department agrees in part with this suggestion. To aid the general public and the motor carrier industry the department withdraws the change submitted on the proposed rules, leaving the current language intact.

Comment

One commenter suggests clarifying the language used in §18.16(c)(1) by rewording it to read "If a motor carrier is required to register under this subchapter, and if its primary business is...."

Response

The department agrees that the proposed language is not clear and adopts the following language: "A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide...."

Comment

One commenter suggests updating the language in §18.16(h) to reflect revisions in the Insurance Code regarding a required finding of insolvency.

Response

The department does not agree with this suggestion. The rule mirrors Transportation Code, §643.105 and there has been no change to this statute. The revised language is to provide the motor carrier with direction and not to provide a definition of insolvency.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §18.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which allows the department to adopt rules to administer Chapter 643 regarding motor carrier registration; and Occupations Code, §2303.051, which provides the commission with the authority to establish rules regarding vehicle storage facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, and Occupations Code, Chapter 230.

§18.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Approved association**--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §18.64 of this chapter.

(2) **Binding proposal**--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(3) **Certificate of insurance**--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §18.16 and §18.86 of this chapter.

(4) **Certificate of registration**--A certificate issued by the department to a motor carrier and containing a unique number.

(5) **Certified scale**--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(6) **Commercial motor vehicle**--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) all tow trucks, regardless of the gross weight rating of the tow truck;

(iii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver;

(iv) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 USC, App. §§1801-1813);

(v) a commercial motor vehicle, as defined by 49 CFR §390.5, owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; and

(vi) any vehicle transporting household goods for compensation, regardless of the gross weight rating, registered weight or gross weight.

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Texas Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle transporting liquor under a private carrier permit issued in accordance with Alcoholic Beverage Code, Chapter 42;

(v) a motor vehicle used to transport passengers and operated by an entity whose primary function is not the transportation of passengers, such as a vehicle operated by a hotel, day-care center, public or private school, nursing home, or similar organization;

(vi) a motor vehicle registered under the Single State Registration System established under 49 USC §14504 when operating exclusively in interstate or international commerce; and

(vii) a vehicle operated by a governmental entity.

(7) **Commercial school bus**--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code Chapter 548; and

(E) complies with Transportation Code, §521.022.

(8) **Commission**--The Texas Transportation Commission.

(9) **Consent tow**--Any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(10) **Conspicuous**--Written in a size, color, and contrast so as to be readily noticed and understood.

(11) **Conversion**--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Texas Business Corporation Act, Article 5.18.

(12) **Department**--Texas Department of Transportation.

(13) **Director**--The director of the Motor Carrier Division, Texas Department of Transportation.

(14) **Division**--The Motor Carrier Division.

(15) **DOI**--Texas Department of Insurance.

(16) **Estimate**--An informal oral calculation of the approximate price of transporting household goods.

(17) **Farmer**--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(18) **Farm vehicle**--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(19) **Gross weight rating**--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

(20) **Household goods**--Personal property intended ultimately to be used in a dwelling when the transportation of that property

is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(21) Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(22) Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise.

(23) Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B and Subchapter G of this chapter.

(24) Inventory--A list of the items in a household goods shipment and the condition of the items.

(25) Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

(26) Manager--The manager of the department's Motor Carrier Division, Motor Carrier Operations Section.

(27) Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(28) Motor Carrier or carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(29) Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(30) Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(31) Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(32) Nonconsent tow--Any tow of a motor vehicle that is not a consent tow.

(33) Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(34) Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(35) Public highway--Any publicly owned and maintained street, road, or highway in this state.

(36) Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates,

during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(37) Registration receipt--A receipt issued to the registrant by its registration state after the requirements of 49 CFR, Part 367 have been met.

(38) Registration state--A state where the registrant maintains a valid single state registration as defined in 49 CFR, Part 367.

(39) Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(40) Revocation--The withdrawal of registration and privileges by the department or a registration state.

(41) Shipper--The owner of household goods or the owner's representative.

(42) Short-term lease--A lease of 30 days or less.

(43) Single state registration system--The program established by 49 USC §14504.

(44) SOAH--The State Office of Administrative Hearings.

(45) State of travel--A state in which a motor carrier operates motor vehicles subject to the single state registration system.

(46) Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(47) Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(48) Towing company--A motor carrier that transports vehicles using a tow truck.

(49) Tow--The utilization of a mechanical device used to winch or otherwise move another vehicle.

(50) Tow truck--A motor vehicle equipped with or used in combination with a mechanical device used to tow, winch, or otherwise move another vehicle. The following motor vehicles are not considered tow trucks:

(A) a motor vehicle owned and used exclusively by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise; or

(E) a motor vehicle that is controlled or operated by a farmer or rancher and that is used for towing a farm vehicle.

(51) Type B household goods carrier--A household goods carrier that does not use a motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe

General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8683



SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§18.13, 18.14, 18.16, 18.17

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which allows the department to adopt rules to administer Chapter 643 regarding motor carrier registration; and Occupations Code, §2303.051, which provides the commission with the authority to establish rules regarding vehicle storage facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, and Occupations Code, Chapter 230.

§18.13. *Application for Motor Carrier Registration.*

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and except as provided in subsection (i) of this section, must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(2) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(3) Principal place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(4) Legal Agent.

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(5) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(6) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household goods, or hazardous materials;

(B) is a tow truck company that performs nonconsent tows; or

(C) is domiciled in a foreign country.

(7) Insurance coverage. An applicant must indicate insurance coverage as required by §18.16 of this subchapter.

(8) Safety affidavit. Each motor carrier must complete, as part of the application, an affidavit stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(9) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382.

(A) Drug-testing consortium participants. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(B) Report of positive result. A motor carrier required to register under this section shall report to the Department of Public Safety, in the manner required by the Department of Public Safety, a valid positive result on a controlled substances test performed as part of the carrier's drug testing program on an employee of the carrier who holds a commercial driver's license under Transportation Code, Chapter 522. The term "employee" as used in this subparagraph includes all employees as defined in Title 49, Code of Federal Regulations, Part 40.3.

(10) Duration of registration. An applicant must indicate the duration of the desired registration. Registration may be for seven calendar days or for 90 days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles. Household goods carriers may not obtain seven day or 90 day certificates of registration.

(11) Additional requirements. The following fees and information must be submitted with all applications.

(A) An application must be accompanied by an application fee of:

(i) \$100 for annual and biennial registrations;

(ii) \$25 for 90 day registrations; or

(iii) \$5 for seven day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) \$10 for each vehicle, other than a tow truck, requiring registration or \$25 for each tow truck that the motor carrier proposes to operate under a seven day, 90 day, or annual registration; or

(ii) \$20 for each vehicle, other than a tow truck, requiring registration or \$50 for each tow truck that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §18.16 of this subchapter.

(D) An application must be accompanied by any other information required by law.

(12) Application of fees. Applicants who have paid vehicle fees under §18.17 of this subchapter may request that the department apply those fees to the carrier's motor carrier registration. The request must be accompanied by a copy of the Single State Registration receipt. On review of the Single State Registration receipt, the department will apply fees paid under the Single State Registration System as follows.

(A) The per vehicle fees paid by the applicant will be applied on a per vehicle basis toward the vehicle fees that the applicant owes for the vehicles registered under motor carrier registration.

(B) Vehicle fees will be applied only to the first year of registration if an applicant applies for a biennial motor carrier registration. The motor carrier must pay all vehicle fees for the second year.

(b) Incomplete applications. The director will return an application to the applicant if it is not accompanied by all fees and by proof of insurance or financial responsibility.

(c) Conditional acceptance of application. The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.

(d) Disposition of application.

(1) Approval. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents.

(A) Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(B) Insurance cab card. The department will issue an original insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier. This subparagraph does not apply to Type B household goods carriers.

(i) A copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed. The appropriate information concerning that vehicle shall be highlighted. The insurance cab card will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(ii) On demand by a department-certified inspector or any other authorized government personnel, the driver shall present

the highlighted page of the insurance cab card that is maintained in the vehicle.

(iii) The carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its insurance cab card.

(iv) Any erasure, alteration, or unauthorized use of an insurance cab card renders it void.

(v) If an original insurance cab card is lost, stolen, destroyed, or mutilated, if it becomes illegible, or if it otherwise requires replacement, a new insurance cab card will be issued by the department at the request of the motor carrier.

(vi) Registration listings previously issued by the department will remain valid until expiration or renewal or until revoked or suspended by the department.

(2) Denial. The department may deny a registration if the applicant had a registration revoked under §18.72 of this chapter.

(e) Additional and Replacement Vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of \$10 for each additional vehicle, other than a tow truck, or \$25 for each tow truck that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of \$20 for each vehicle, other than a tow truck, or \$50 for each tow truck. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of \$10 for each vehicle, other than a tow truck, or \$25 for each tow truck.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(3) Fees paid under the Single State Registration System. Vehicle fees paid under §18.17 of this subchapter will be applied toward a motor carrier's vehicle fees under subsection (a)(12) of this section.

(f) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials, or performing nonconsent tows, unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §18.16 of this subchapter.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §18.16 of this subchapter. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the State of Texas must complete the name change

under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Texas Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to re-register instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the facts that gave rise to the suspension or revocation.

(g) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(h) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a commercial motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate will include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(i) Type B household goods carriers. An application for motor carrier registration submitted by a Type B household goods carrier shall be in the form prescribed by the director.

(1) The carrier's application must contain all the information described in subsection (a) of this section, except for the information specified in subsection (a)(5) and (7) of this section.

(2) The carrier's application must be accompanied by a \$100 application fee.

(3) The carrier's application must be accompanied by proof of financial responsibility for cargo loss or damage and by the filing fee specified in §18.16 of this subchapter.

(4) The carrier's application must include a statement certifying that the carrier:

(A) is in compliance with Transportation Code, Chapter 601; and

(B) if the carrier maintains an automobile liability insurance policy to comply with Transportation Code, Chapter 601, then the policy is an enforceable commercial or business automobile liability insurance policy.

(5) The department will issue an original certificate of registration, which must be continuously maintained at the registrant's principal place of business.

(6) A carrier shall carry a copy of its certificate of registration either in the cab of each vehicle or in each trailer used for the transportation of household goods.

(7) The carrier shall notify the department in writing when it discontinues operations as a transporter of household goods.

(8) On demand by a department-certified inspector or any other authorized government personnel, the driver shall present the certificate of registration maintained in the vehicle.

(9) The certificate of registration is continuously in effect until suspended or revoked by the department. A motor carrier may voluntarily cancel the certificate of registration by submitting a supplemental application or written request.

(10) Any erasure, alteration, or unauthorized use of a certificate of registration renders it void.

(j) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §18.19 of this subchapter. A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

§18.14. Expiration and Renewal of Commercial Motor Vehicle Registration.

(a) Expiration and renewal dates.

(1) A motor carrier with annual or biennial registration, other than a Type B household goods carrier, will be assigned a date for the expiration and renewal of its motor carrier registration according to the last digit of the carrier's certificate of registration number, as outlined in the following chart:

Figure: 43 TAC §18.14(a)(1) (No change.)

(2) Certificates of registration for Type B household goods carriers remain in effect until suspended or revoked.

(3) 90 day certificates of registration are valid for 90 calendar days from the effective date.

(4) Seven day certificates of registration are valid for seven calendar days from the effective date.

(b) Registration renewal.

(1) Approximately 60 days before the expiration of registration, the department will mail or send electronically a renewal notice to each registered motor carrier with annual or biennial registration, other than a Type B household goods carrier. The notice will be mailed to the carrier's last known address according to the division's records.

Failure to receive the notice does not relieve the registrant of the responsibility to renew. A motor carrier must ensure that the department receives the renewal at least 15 days prior to the renewal date specified in subsection (a) of this section. A supplement to an application for motor carrier registration renewal must:

(A) supply any new information required under §18.13(f) of this subchapter if the information has not previously been supplied to the department;

(B) include a \$10 fee for each vehicle, other than a tow truck, requiring registration or \$25 for each tow truck that the carrier operates under an annual certificate of registration and a \$20 fee for each vehicle, other than a tow truck, requiring registration or \$50 for each tow truck that the carrier operates under a biennial certificate of registration; and

(C) include a copy of the Single State Registration receipt when requesting that vehicle fees paid under §18.17 of this subchapter be applied toward the fees specified by this subsection.

(2) Seven day and 90 day registrations may not be renewed.

(3) A motor carrier shall maintain continuous insurance or evidence of financial responsibility in an amount at least equal to the amount prescribed under §18.16 of this subchapter.

(4) The insurance cab card issued to a motor carrier is valid for the same period as the motor carrier's certificate of registration.

(5) To renew registration after it has expired, a motor carrier must identify its vehicles on a form prescribed by the director, pay all vehicle fees, and if current proof of insurance is not on file with the division, meet all insurance requirements.

§18.16. Insurance Requirements.

(a) Automobile liability insurance requirements.

(1) A motor carrier, other than a Type B household goods carrier, must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table.

Figure: 43 TAC §18.16(a)(1)

(2) Type B household goods carriers shall comply with the applicable requirements of Transportation Code, Chapter 601. If a Type B household goods carrier maintains an automobile liability insurance policy to comply with Transportation Code, Chapter 601, the policy must be an enforceable commercial or business automobile liability insurance policy.

(b) Cargo insurance.

(1) Household goods carriers shall file and maintain with the department proof of financial responsibility.

(A) The minimum limits of financial responsibility for a household goods carrier for hire is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(B) The minimum limits of financial responsibility for a household goods carrier for hire is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases

in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(2) Tow truck company performing nonconsent tows. A tow truck company that performs nonconsent tows shall file and maintain with the department proof of financial responsibility for on-hook cargo. The minimum level of financial responsibility for each registered vehicle performing nonconsent tows will be in the amount of at least \$50,000.

(c) Workers' compensation or accidental insurance coverage.

(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses and coverage for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment, including 70% of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) \$500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept United States Department of Transportation evidence of the motor carrier's qualifications as a self-insured.

(2) Adopted final orders. The department adopts all final orders of the Railroad Commission of Texas to the extent that they concern self-insurance and were in effect on August 31, 1995. Those final orders are continued in effect until changed by order of the department.

(3) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

(i) reserves;

(ii) sinking funds;

- (iii) third-party financial guarantees;
- (iv) parent company or affiliate sureties;
- (v) excess insurance coverage; and
- (vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the Federal Motor Carrier Safety Regulations as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(4) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(5) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports required by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(6) Duration of self-insured status. The department may approve an applicant as a self-insured for any specific time or for an indefinite time.

(7) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured to provide additional information. On 10 days notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance orders issued or adopted by the department. If an applicant fails to comply with this paragraph, its self-insured status may be revoked.

(8) Appeal. An applicant may appeal a denial or revocation of self-insurance status by filing a petition for an administrative hearing in accordance with §§1.21 et seq. of this title (relating to Procedures in Contested Cases).

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier, other than a Type B household goods carrier, shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(C) A tow truck company that performs nonconsent tows shall file and maintain with the department proof of on-hook cargo insurance for all nonconsent tows. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance and financial responsibility. A motor carrier's insurance or surety company, bank, or other financial institution shall file and maintain proof of insurance or financial responsibility on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §18.13(f)(2) of this subchapter;

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable filing fee of \$100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The department will not accept an insurance policy or certificate of insurance unless it is issued by an insurance company licensed and authorized to do business in the State of Texas. It must be in a form prescribed or approved by the DOI and signed or countersigned by an authorized agent of the insurance company. The department will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2, and rules adopted by the DOI under that article.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurance company in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurance company without 30 days notice if the certificate of registration is expired, suspended, or revoked, and the insurance company provides a cancellation date on the proof of insurance coverage. The department will revoke a certificate of registration under §18.72 of this chapter for failure to maintain proof of current insurance.

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(1) the new insurance filing is received by the department; and

(2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

(1) no accidents have occurred and no claims have arisen during the insolvency of the insurance carrier; or

(2) all claims have been satisfied.

(i) Notifications. The department shall notify the Texas Department of Public Safety and other law enforcement agencies of each

motor carrier whose certificate of registration has been revoked for failing to maintain liability insurance coverage.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe

General Counsel

Texas Department of Transportation

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43 TAC §18.18

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which allows the department to adopt rules to administer Chapter 643 regarding motor carrier registration; and Occupations Code, §2303.051, which provides the commission with the authority to establish rules regarding vehicle storage facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, and Occupations Code, Chapter 230.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§18.51, 18.58, 18.63 - 18.65

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which allows the department to adopt rules to administer Chapter 643 regarding motor carrier registration; and Occupations Code, §2303.051, which provides the commission with the authority to establish rules regarding vehicle storage facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, and Occupations Code, Chapter 230.

§18.65. *Tariff Registration.*

(a) Submission. In accordance with Transportation Code, §643.153, a household goods carrier and/or its household goods agent shall file a tariff with the department. The tariff shall establish maximum rates and charges for transportation services when a highway between two or more incorporated cities, towns or villages is traversed. A household goods carrier who is not a member of an approved association under §18.64 of this title (relating to Rates) shall file a tariff individually. In lieu of filing individually, a household goods carrier or its household goods agent, that is a member of an approved association in accordance with §18.64 of this title (relating to Rates), may designate a collective association as its ratemaking association. The association may file a tariff, as required by this subsection, for member carriers.

(1) Contents. The tariff:

(A) shall set out all rates, charges, rules, regulations, or other provisions, in clear and concise terms, used to determine total transportation charges;

(B) may provide for the offering, selling, or procuring of insurance as provided in §18.54 of this title (relating to Selling Insurance to Shippers);

(C) may provide for the base transportation charge to include assumption by the household goods carrier for the full value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper from the household goods carrier is not issued to the shipper at the time of purchase;

(D) shall describe the procedure for determining charges that are below the maximum rate for each service performed; and

(E) shall reference a specific mileage guide or source, if information on rates and charges based on mileage is included in the tariff (The referenced mileage guide shall be filed with the department as an addendum to the tariff. If the household goods carrier utilizes a computer database as a mileage guide, the household goods carrier shall allow department personnel free access to the system when conducting an inquiry regarding a specific movement performed by the household goods carrier).

(2) Interstate tariff. In accordance with Transportation Code, §643.153, a household goods carrier may satisfy the requirements of this subsection by filing a copy of its tariff governing interstate household goods transportation services.

(3) Transmittal letter. A transmittal letter shall accompany a tariff being filed. The transmittal letter shall provide:

(A) the name of the household goods carrier;

(B) the Texas mailing address and street address of the household goods carrier's principal office;

(C) the household goods carrier's registration number;

(D) the name and title of the household goods carrier's representative authorizing the tariff filing; and

(E) whether the tariff is being filed on behalf of a member carrier.

(4) Format. Tariffs shall be filed:

(A) on 8 1/2" x 11" paper;

(B) with a cover sheet showing:

(i) the name of the issuing household goods carrier or collective ratemaking association;

(ii) the Texas mailing and street address;

(iii) the issuance date of the tariff;

(iv) the effective date of the tariff; and

(v) the tariff number; and

(C) separated into the following sections:

(i) general rules;

(ii) accessorial services; and

(iii) rates.

(5) Item numbers. Individual items shall be titled and designated by item number.

(6) Amendments. Any amendment to a tariff shall be filed with the department not less than 10 days prior to the effective date of the amendment. The household goods carrier or collective ratemaking association filing on behalf of its member may either file an amended tariff in total or an amendment referencing the specific sections and items which are being amended. The amendment format shall be the same as required by paragraph (4) of this subsection. A transmittal letter providing the same information as required by paragraph (3) of this subsection shall accompany the amendment filing.

(7) Rejection. The department will reject a tariff or amendment filing if it is determined the tariff:

(A) fails to meet the requirements of this section; or

(B) fails to fully disclose, in clear and concise terms, all rates, charges, and rules.

(8) Electronic filings. A household goods carrier may file an electronic copy of its tariff provided that the document is consistent with the provision of this subsection and is formatted in Microsoft Word or other format approved by the director.

(b) Operations. The department will accept a tariff which is in substantial compliance with this section if the tariff was submitted prior to November 1, 1995.

(c) Access. In accordance with Transportation Code, §643.153, tariffs filed in accordance with this section will be made available for public inspection at the Motor Carrier Division, 4203 Bull Creek Road, Building 22, Austin, Texas, 78731, and by calling 1-800-299-1700.

(d) Conflicts. All provisions of household goods carriers' tariffs are superseded to the extent they may conflict with the provisions of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. VEHICLE STORAGE FACILITIES

43 TAC §§18.82, 18.87 - 18.93, 18.96

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which allows the department to adopt rules to administer Chapter 643 regarding motor carrier registration; and Occupations Code, §2303.051, which provides the commission with the authority to establish rules regarding vehicle storage facilities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643, and Occupations Code, Chapter 230.

§18.92. *Technical Requirements.*

(a) Release of vehicles. The licensee shall comply with the following requirements when releasing vehicles.

(1) The licensee shall comply with all provisions of Texas Transportation Code, Chapter 685, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

(A) the justice court that has jurisdiction in the precinct in which the vehicle storage facility is located; and

(B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.

(2) The licensee shall provide the owner or the owner's representative with a tow ticket or wrecker slip as prescribed in §18.88 of this subchapter.

(3) Except as provided in subsection (a)(8) of this section, the licensee shall allow the vehicle owner or his/her authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in §18.91(d)(1) of this subchapter, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) notarized proof of loss claim of theft from an insurance company to show a right to possession;

(F) positive name and address information corresponding to that contained in the files of the department's Vehicle Titles and Registration Division; or

(G) a department approved Affidavit of Right of Possession and Control, as defined in §18.82 of this subchapter, which is to be furnished by the licensee upon request (an Affidavit of Right of Possession and Control is not to be used as a repossession instrument).

(4) All vehicle storage facilities shall have vehicles available for release 24 hours a day within one hour's notice if it accepts vehicles 24 hours a day.

(5) If a vehicle storage facility does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(6) In addition to other forms of payment accepted by the vehicle storage facility, one of the following must be accepted for any charge associated with delivery or storage of a vehicle:

- (A) credit card;
- (B) debit card; or
- (C) electronic check.

(7) the licensee may not refuse to release the vehicle to the vehicle's owner due to nonpayment by the law enforcement agency that directed the towing and storage of the vehicle for evidentiary or examination purposes.

(8) Pursuant to 37 TAC §4.16, relating to commercial vehicle regulations and enforcement procedures, a commercial motor vehicle stored at the direction of the Texas Department of Public Safety shall not be released until the amount of delinquent administrative penalty assessed against the motor carrier has been paid.

(b) Notification of insurance information. Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required garage keeper's legal liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that on file with the department.

(c) Publicly listed telephone number. All vehicle storage facilities shall have a publicly listed and operable telephone where the licensee can be contacted. If the telephone number is changed from the number set out in the vehicle storage license application, the licensee shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

(d) Inspection of stored vehicles. When the licensee, the licensee's agent, or the licensee's employee accepts a vehicle towed without the vehicle owner's consent, such person shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the slip or ticket. If the license plate number or vehicle identification number on the wrecker ticket or wrecker slip are incorrect, the vehicle storage facility shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

(e) Removal of parts; dismantling or demolishing of stored vehicles. Except as stated to the contrary in this section, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed vehicle storage facility. Vehicles may be dismantled or demolished only if the storage lot has a certificate of title, certificate of authority to demolish, police auction

sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

(f) Use of stored vehicles. No stored vehicle may be utilized for personal or business use without the written consent of the vehicle's owner.

(g) Reasonable storage efforts. A vehicle storage facility operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sun roofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in §18.93 of this subchapter.

(h) Impoundment of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the preservation of the stored vehicle. A vehicle storage facility operator is entitled to charge a fee for impoundment if, in addition to the requirements set out in this subsection, the vehicle storage facility operator, at a minimum:

(1) conducts a written inventory of any unsecured personal property contained in the vehicle;

(2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; and

(3) obtains motor vehicle registration information for the vehicle from the department.

(i) Repair or alteration of stored vehicles. A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without the vehicle owner's or his authorized representative's consent.

(j) Vehicle transfers. When a motor vehicle has been delivered to a vehicle storage facility, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of vehicle storage facility capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The vehicle storage facility must send notice in accordance with §18.87 of this subchapter, except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a vehicle storage facility, the licensee shall:

(1) charge only those fees otherwise permitted by §18.93 of this subchapter after the vehicle is towed to another location without the vehicle owner's permission;

(2) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the vehicle storage facility until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and

(3) maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602402
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: May 18, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 463-8683



CHAPTER 21. RIGHT OF WAY

SUBCHAPTER B. UTILITY ADJUSTMENT, RELOCATION, OR REMOVAL

43 TAC §21.23

The Texas Department of Transportation (department) adopts new §21.23 concerning state participation for utility adjustments, relocations, or removals made on toll-related facilities. New §21.23 is adopted without changes to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 839) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

House Bill 2702, 79th Legislature, Regular Session, 2005, amended Transportation Code, §203.092. The amendments to Transportation Code, §203.092, require the department and utilities to share equally the costs of utility adjustments, relocations, or removals made prior to September 1, 2007 on toll-related state highway improvements.

The new section is necessary to implement this legislation and to establish procedures concerning reimbursement of public utilities for facility adjustments, relocations, or removals undertaken on toll-related facilities.

In order to ensure that eligible costs are properly incurred and tracked, new §21.23 requires a utility that is relocating facilities on a toll-related facility to enter into an agreement with the department or, under certain circumstances, a department contractor, prior to commencing work. Eligibility to enter an agreement is

determined by the department or its contractor based on the existence of a conflict between a utility's facility and the proposed toll facility. If a dispute arises as to a utility's eligibility, a utility may appeal to the Director of the Right of Way Division. The section also establishes eligible relocation costs in accordance with Transportation Code, §203.092(d). To be consistent with the September 1, 2007 expiration of the reimbursement authorization in Transportation Code, §203.092, §21.23, paragraph (2) of subsection (d), limits reimbursement eligibility to those costs actually incurred prior to September 1, 2007.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 203, which authorizes the commission to construct a modern state highway system.

CROSS REFERENCE TO STATUTE

Transportation Code, §203.092.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 28, 2006.

TRD-200602403
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: May 18, 2006
Proposal publication date: February 10, 2006
For further information, please call: (512) 463-8683



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 151, General Provisions, §151.6, Petition for the Adoption of a Rule, and §151.55, Disposal of Surplus Agricultural Goods and Agricultural Personal Property.

This review is being conducted pursuant to Texas Government Code §2001.039 which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-200602359

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: April 27, 2006



Texas Groundwater Protection Committee

Title 21, Part 18

The Texas Groundwater Protection Committee (TGPC or committee) files this notice of intention to review and proposes the readoption of Chapter 601, Groundwater Contamination Report, with amendments as concurrently published in the Proposed Rules section of this issue of the *Texas Register*.

This review of Chapter 601 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

The TGPC was created by the 71st Legislature in 1989 to bridge gaps between existing state groundwater programs and to optimize water quality protection by improving coordination among agencies involved in groundwater activities. The committee's rules in Chapter 601 define the conditions that constitute groundwater contamination for the purpose of inclusion of cases in the public files for each state agency having responsibilities related to the protection of groundwater. These rules also describe the contents of the committee's Joint Groundwater Mon-

itoring and Contamination Report required under Texas Water Code (TWC), §26.406. The report describes the current status of groundwater monitoring activities conducted by or required by each agency at regulated facilities or associated with regulated activities; contains a description of each case of groundwater contamination documented during the previous calendar year; contains a description of each case of contamination documented during the previous year for which enforcement action was incomplete at the time of issuance of the preceding report; and indicates the status of enforcement action for each case of contamination which is listed. The rules also specify the form and content of notices of groundwater contamination that must be mailed to each owner of a private drinking water well that may be affected by documented cases of groundwater contamination and to each applicable groundwater conservation district as directed by TWC, §26.408.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The committee conducted a preliminary review and determined that the reasons for the rules in Chapter 601 continue to exist. Chapter 601 is necessary because TWC, §26.406 specifically provides that the committee shall adopt rules defining the conditions that constitute groundwater contamination for purposes of inclusion of cases in the public files and the joint report required by this section, and TWC, §26.408 specifically directs the committee to designate the form and content of the notice of groundwater contamination mailed to owners of private drinking water wells and to groundwater conservation districts. To meet these statutory requirements, the rules provide the definitions and applicability for maintaining public files on groundwater contamination cases and contents of the annual Joint Groundwater Monitoring and Contamination Report required by TWC, §26.406(d) and the form and content of the mailed notice required by TWC, §26.408(c).

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The committee invites public comment on whether the reasons for the rules in Chapter 601 continue to exist. Comments may be submitted to Kathleen McCormack, Groundwater Planning and Assessment, MC 147, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4450. All comments should reference TGPC-Groundwater Contamination Report Quadrennial Review. Comments must be received by 5:00 p.m., June 12, 2006. For further information or questions concerning this proposal, please contact Mary Ambrose, Designated Chairman, Texas Groundwater Protection Committee, at (512) 239-4813.

TRD-200602372

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Groundwater Protection Committee
Filed: April 28, 2006

◆ ◆ ◆
Adopted Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Department of Criminal Justice (TDCJ) readopts Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.45, Distribution of Community Corrections Funding, as proposed in the December 30, 2005, issue of the *Texas Register*.

The purpose of the rule is to notify the judiciary, Community Supervision and Corrections Departments, and the public that community corrections funding shall be distributed in accordance with applicable law and TDCJ rules and policy.

No comments were received. However, during the approval process for placement on the Agenda, it was noted that the acronym TDCJ needed to be defined in the rule.

The rule is readopted under Texas Government, §493.003.

Cross Reference to Statutes: Texas Government Code, Chapter 492 and Chapter 509.

TRD-200602349
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 27, 2006

◆ ◆ ◆
Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas, on behalf of the Office of Consumer Credit Commissioner (agency), has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter Q (§§1.1201

- 1.1207, 1.1211 - 1.1212, 1.1214 - 1.1217, 1.1221 - 1.1222, 1.1224 - 1.1227, 1.1231 - 1.1232, 1.1234 - 1.1237, 1.1241 - 1.1242, 1.1244 - 1.1247, and 1.1251 - 1.1256) relating to Chapter 342, Plain Language Contract Provisions, and Subchapter S (§§1.1401 - 1.1410) relating to Motor Vehicle Sales Finance Licenses, pursuant to §2001.039, Texas Government Code.

Notice of the review of 7 TAC Chapter 1, Subchapters Q and S was published in the *Texas Register* as required on February 3, 2006 (31 TexReg 711). The agency received no comments in response to that notice.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for initially adopting the rules contained in these subchapters continue to exist. However, the agency determined that these rules should be relocated and that certain revisions are appropriate and necessary. The proposed repeals of Subchapter Q and Subchapter S, as well as the proposed new sections contained within new Chapters 90 and 84, respectively, are being concurrently published elsewhere in this issue of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

Any questions or written comments pertaining to the proposed changes (published elsewhere in this issue) resulting from this rule review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us.

Subject to the proposed repeals of Subchapter Q and Subchapter S, the commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections without changes in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC Chapter 1, Subchapters Q and S.

TRD-200602425
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: May 1, 2006

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §20.22(a)

| Pest Mgmt Zone | Destruction Deadline |
|----------------|----------------------|
| 1 | September 1 |
| 2 - Area 1 | September 1 |
| 2 - Area 2 | September 1 |
| 2 - Area 3 | September 1 |
| 2 - Area 4 | October 1 |
| 3 - Area 1 | October 1 |
| 3 - Area 2 | October 15 |
| 3 - Area 3 | October 20 |
| 4 | October 10 |
| [5] | [October 20] |
| 6 | October 31 |
| 7 | October 31 |
| 8 - Area 1 | October 31 |
| 8 - Area 2 | November 30 |
| 9 | March 1 |
| 10 | February 1 |

Figure: 7 TAC §84.209(1)(A)

"(Optional:) DATE _____)
 BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____ "

SELLER/CREDITOR _____
 ADDRESS _____
 CITY _____ TX ZIP _____
 PHONE _____

(Optional Co-Buyer Identification)
 CO-BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____ "

Figure: 7 TAC §84.209(5)

MOTOR VEHICLE IDENTIFICATION

| | | | | | | | |
|-----------|------|------|-------|-------------------------------|--------------------------------|---|--|
| Stock No. | Year | Make | Model | Vehicle Identification Number | License Number (if applicable) | <input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used | USE FOR WHICH PURCHASED <input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL |
|-----------|------|------|-------|-------------------------------|--------------------------------|---|--|

Figure: 7 TAC §84.209(6)

"Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____"

Figure: 7 TAC §84.209(7)

| | | | | |
|--|---|--|---|---|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. <div style="text-align: right;">% \$</div> | FINANCE CHARGE The dollar amount the credit will cost me. <div style="text-align: right;">\$</div> | Amount Financed The amount of credit provided to me or on my behalf. <div style="text-align: right;">\$</div> | Total of Payments The amount I will have paid after I have made all payments as scheduled. <div style="text-align: right;">\$</div> | Total Sale Price The total cost of my purchase on credit, including down payment of \$ _____ <div style="text-align: right;">\$</div> |
|--|---|--|---|---|

My Payment Schedule will be:

| <u>Number of Payments</u> | <u>Amount of Payments</u> | <u>When Payments Are Due</u> |
|---------------------------|---------------------------|------------------------------|
| | | |
| | | |

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [True daily earnings method:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [Scheduled Installment Earnings Method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

Figure: 7 TAC §84.209(8)(A)

| ITEMIZATION OF AMOUNT FINANCED | | |
|---|----------|--------------|
| 1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] | | \$ _____ (1) |
| 2. Downpayment = | | |
| [If netting add: (if negative, enter "0" and see Line 4.A. below)] | | |
| Gross trade-in | \$ _____ | |
| - payoff by seller | \$ _____ | |
| = net trade-in | \$ _____ | |
| [If not netting add: (if negative enter "0" and see Line 4.A. below)] | | |
| + cash | \$ _____ | |
| + Mfrs. Rebate | \$ _____ | |
| + other (describe) _____ | \$ _____ | |
| Total downpayment | | \$ _____ (2) |
| 3. Unpaid balance of cash price (1 minus 2) | | \$ _____ (3) |
| 4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.): | | |
| A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to | \$ _____ | |
| B. Cost of physical damage insurance paid to insurance company | \$ _____ | |
| C. Cost of optional coverages with physical damage insurance paid to insurance company | \$ _____ | |
| D. Cost of optional credit insurance paid to insurance company or companies | \$ _____ | |
| Life | | |
| Disability | | |
| E. Other insurance paid to the insurance company | \$ _____ | |
| F. Official fees paid to government agencies | \$ _____ | |
| G. Dealer's inventory tax [Optional addition: (if not included in cash price)] | \$ _____ | |
| H. Sales tax [Optional addition: (if not included in cash price)] | \$ _____ | |
| I. Other taxes [Optional addition: (if not included in cash price)] | \$ _____ | |
| J. Government license and/or registration fees | \$ _____ | |
| K. Government certificate of title fee | \$ _____ | |
| L. Government vehicle inspection fees | \$ _____ | |
| M. Deputy service fee paid to dealer | \$ _____ | |
| N. Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50. This notice is required by law. [Option to insert Spanish translation of disclosure here.] | \$ _____ | |
| O. Other charges (Seller must identify who is paid and describe purpose) | | |
| to _____ for _____ | \$ _____ | |
| to _____ for _____ | \$ _____ | |
| to _____ for _____ | \$ _____ | |
| Total other charges and amounts paid to others on my behalf | | \$ _____ (4) |
| 5. Amount Financed (3 + 4) | | \$ _____ (5) |
| [Optional Caption: Taxes, title fee, license fee, and any state inspection fee (except for \$5.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.] | | |

[Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.]

Figure: 7 TAC §84.209(8)(B)

| ITEMIZATION OF AMOUNT FINANCED | |
|--|--------------|
| 1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] | \$ _____ (1) |
| 2. Downpayment (A + B) = | |
| A. [If netting add: (if negative, enter "0" and see Line 4.A. below)] | |
| Gross trade-in | \$ _____ |
| - payoff by seller | \$ _____ |
| = net trade-in | \$ _____ |
| B. [If not netting add: (if negative enter "0" and see Line 4.A. below)] | |
| + cash | \$ _____ |
| + Mfrs. Rebate | \$ _____ |
| + other (describe) _____ | \$ _____ |
| Total downpayment | \$ _____ (2) |
| 3. Unpaid balance of cash price (1 minus 2) | \$ _____ (3) |
| 4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.): | |
| A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to | \$ _____ |
| B. Cost of physical damage insurance paid to insurance company | \$ _____ |
| C. Cost of optional coverages with physical damage insurance paid to insurance company | \$ _____ |
| D. Cost of optional credit insurance paid to insurance company or companies | \$ _____ |
| Life | \$ _____ |
| Disability | \$ _____ |
| E. Other insurance paid to the insurance company | \$ _____ |
| F. Official fees paid to government agencies | \$ _____ |
| G. Dealer's inventory tax [Optional addition: (if not included in cash price)] | \$ _____ |
| H. Other taxes [Optional addition: (if not included in cash price)] | \$ _____ |
| I. Government license and/or registration fees | \$ _____ |
| J. Government certificate of title fee | \$ _____ |
| K. Government vehicle inspection fees | \$ _____ |
| L. Deputy service fee paid to dealer | \$ _____ |
| M. Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50. This notice is required by law. [Option to insert Spanish translation of disclosure here.] | \$ _____ |
| N. Other charges (Seller must identify who is paid and describe purpose) | |
| to _____ for _____ | \$ _____ |
| to _____ for _____ | \$ _____ |
| to _____ for _____ | \$ _____ |
| Total Itemized Charges upon which the Finance Charge is assessed | \$ _____ (4) |
| 5. Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4) | \$ _____ (5) |
| 6. Total Sales Tax (Upon Which No Finance Charge is Assessed) | \$ _____ (6) |
| 7. Amount Financed (5+6) | \$ _____ (7) |
| Finance Charge (Not Assessed Upon Sales Tax) | \$ _____ |

[Optional Caption: Taxes, title fee, license fee, and any state inspection fee (except for \$5.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.]

Figure: 7 TAC §84.209(10)

| DEFERRED DOWNPAYMENT(S) | |
|-------------------------|----------|
| AMOUNT | DATE DUE |
| | |
| | |
| | |

Figure: 7 TAC §84.209(11)

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

| Coverage | Term in Months | Premium |
|---|----------------|-----------------------------------|
| Collision | _____ | <input type="checkbox"/> \$ _____ |
| Comprehensive | _____ | <input type="checkbox"/> \$ _____ |
| Fire, Theft, and Combined Additional Coverage | _____ | <input type="checkbox"/> \$ _____ |
| Other | _____ | <input type="checkbox"/> \$ _____ |

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. *[Note: alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]*

☐ \$ _____ Towing and Labor Costs Reimbursement ☐ \$ _____ Rental Reimbursement

☐ \$ _____ Other: _____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

Figure: 7 TAC §84.209(12)

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. **[At Creditor's Option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

| Coverage | Term in Months | Premium |
|---------------------|--|-----------------------------------|
| GAP* | _____ | <input type="checkbox"/> \$ _____ |
| Invol. Unemployment | _____ | <input type="checkbox"/> \$ _____ |
| _____ | _____ | <input type="checkbox"/> \$ _____ |
| Liability Insurance | _____ | <input type="checkbox"/> \$ _____ |
| | \$ _____ per person \$ _____ per accident | \$ _____ property damage |

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

Figure: 7 TAC §84.209(13)

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. **[At Creditor's Option, the following may be added:]** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

| | | | | |
|---|----------|---|----------|------------|
| <input type="checkbox"/> Credit Life, one buyer | \$ _____ | <input type="checkbox"/> Credit Life, both buyers | \$ _____ | Term _____ |
| <input type="checkbox"/> Credit Disability, one buyer | \$ _____ | <input type="checkbox"/> Credit Disability, both buyers | \$ _____ | Term _____ |

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first _____ payments and does not cover the last scheduled payment. **[Optional additional language for true daily earnings method contracts:]** Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

Figure: 7 TAC §84.209(15)

"Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer"

Figure: 7 TAC §84.209(18)(B)

" _____
Buyer _____ Date _____ Seller _____ Date _____
Co-Buyer _____ Date _____
THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT."

Figure: 7 TAC §84.209(21)

"You will apply my payments in the following order:
1. earned but unpaid finance charge; and
2. to anything else I owe under this agreement."

Figure: 7 TAC §84.209(31)

"To secure all I owe on this contract and all my promises in it, I give you a security interest in
• the motor vehicle including all accessories and parts now or later attached
(Optional: and any other goods financed in this contract);
• all insurance proceeds and other proceeds received for the motor vehicle;
• any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
• any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle."

Figure: 7 TAC §84.209(34)(A)

"I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law."

Figure: 7 TAC §84.210(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)
 BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

SELLER/CREDITOR _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

| | | | | | | | |
|-----------|------|------|-------|-------------------------------|--------------------------------|---|---|
| Stock No. | Year | Make | Model | Vehicle Identification Number | License Number (if applicable) | <input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory Official/Executive <input type="checkbox"/> Used | USE FOR WHICH PURCHASED <input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL |
|-----------|------|------|-------|-------------------------------|--------------------------------|---|---|

Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

| | | | | |
|--|---|--|---|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. <div style="text-align: right;">% \$</div> | FINANCE CHARGE The dollar amount the credit will cost me. <div style="text-align: right;">\$</div> | Amount Financed The amount of credit provided to me or on my behalf. <div style="text-align: right;">\$</div> | Total of Payments The amount I will have paid after I have made all payments as scheduled. <div style="text-align: right;">\$</div> | Total Sale Price The total cost of my purchase on credit, including down payment of <div style="text-align: right;">\$ _____</div> |
|--|---|--|---|--|

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [True daily earnings:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [Scheduled Installment Earnings Method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] \$ _____ (1)

2. Downpayment = \$ _____
 [If netting add: (if negative, enter "0" and see Line 4.A. below)]
 Gross trade-in \$ _____
 - payoff by seller \$ _____
 = net trade-in \$ _____
 [If not netting add: (if negative enter "0" and see Line 4.A. below)]
 + cash \$ _____
 + Mfrs. Rebate \$ _____
 + other (describe) _____ \$ _____
 Total downpayment \$ _____ (2)

3. Unpaid balance of cash price (1 minus 2) \$ _____ (3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
 - A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to \$ _____
 - B. Cost of physical damage insurance paid to insurance company \$ _____
 - C. Cost of optional coverages with physical damage insurance paid to insurance company \$ _____
 - D. Cost of optional credit insurance paid to insurance company or companies \$ _____
 Life _____
 Disability _____
 - E. Other insurance paid to the insurance company \$ _____
 - F. Official fees paid to government agencies \$ _____
 - G. Dealer's inventory tax [Optional addition: (if not included in cash price)] \$ _____
 - H. Sales tax [Optional addition: (if not included in cash price)] \$ _____
 - I. Other taxes [Optional addition: (if not included in cash price)] \$ _____
 - J. Government license and/or registration fees \$ _____
 - K. Government certificate of title fee \$ _____
 - L. Government vehicle inspection fees \$ _____
 - M. Deputy service fee paid to dealer \$ _____
 - N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50. This notice is required by law. [Option to insert Spanish translation of disclosure here.]** \$ _____
 - O. Other charges (Seller must identify who is paid and describe purpose) \$ _____
 to _____ for _____ \$ _____
 to _____ for _____ \$ _____
 to _____ for _____ \$ _____

Total other charges and amounts paid to others on my behalf

\$ _____ (4)
\$ _____ (5)

5. Amount Financed (3 + 4)

[Optional Caption: Taxes, title fee, license fee, and any state inspection fee (except for \$5.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.]

| DEFERRED DOWNPAYMENT(S) | |
|-------------------------|----------|
| AMOUNT | DATE DUE |
| | |
| | |
| | |

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

| Coverage | Term in Months | Premium |
|---|----------------|-----------------------------------|
| Collision | _____ | <input type="checkbox"/> \$ _____ |
| Comprehensive | _____ | <input type="checkbox"/> \$ _____ |
| Fire, Theft, and Combined Additional Coverage | _____ | <input type="checkbox"/> \$ _____ |
| Other | _____ | <input type="checkbox"/> \$ _____ |

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. *[Note: alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]*

☐ \$ _____ Towing and Labor Costs Reimbursement ☐ \$ _____ Rental Reimbursement
☐ \$ _____ Other: _____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. *[At Creditor's Option, the following may be added:]* My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

| Coverage | Term in Months | Premium |
|---------------------|---|-----------------------------------|
| GAP* | _____ | <input type="checkbox"/> \$ _____ |
| Invol. Unemployment | _____ | <input type="checkbox"/> \$ _____ |
| _____ | _____ | <input type="checkbox"/> \$ _____ |
| Liability Insurance | _____ | <input type="checkbox"/> \$ _____ |
| | \$ _____ per person \$ _____ property damage | |
| | \$ _____ per accident | |

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. *[At Creditor's Option, the following may be added:]* My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐ Credit Life, one buyer \$ _____ ☐ Credit Life, both buyers \$ _____ Term _____
☐ Credit Disability, one buyer \$ _____ ☐ Credit Disability, both buyers \$ _____ Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first _____ payments and does not cover the last scheduled payment. *[Optional additional language for true daily earnings method contracts:]* Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

Buyer _____ Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular Transaction using sum of the periodic balances method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A₂: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$_____ per \$100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$_____ per \$100.00.

[True Daily Earnings Method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A₂: Sales Tax Advance) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[Scheduled Installment Earnings Method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or return check charges. (Option A₂: Sales Tax Advance) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: If the buyer's signature is dated) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: If the buyer's signature is not dated) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: If the buyer's signature is not dated) I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: If the buyer's signature is dated or not dated) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

Buyer

Date

Seller

Date

Co-Buyer

Date

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; (512) 936-7600; (800) 538-1579, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and Scheduled Installment Earnings Method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled Installment Earnings Method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

HOW YOU WILL APPLY MY PAYMENTS **[True daily earnings method:]** You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. to anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY **[True daily earnings method:]** You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES **[True daily earnings method:]** If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. **[Scheduled installment earnings method or sum of the periodic balances:]** If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25.00 (\$50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens, and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS AND SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 7 TAC §90.203(b)(2)(A)

"ITEMIZATION OF AMOUNT FINANCED

1. Amount financed: (2+3+4) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A+B+C+D+E+F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
Life \$ _____
Disability \$ _____
Involuntary Unemployment Insurance \$ _____
Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to: _____ \$ _____
Payable to: _____ \$ _____
Payable to: _____ \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____."

Figure: 7 TAC §90.203(b)(2)(B)

"ITEMIZATION OF AMOUNT FINANCED

1. Amount financed: (2+3+4-5) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A+B+C+D+E+F) \$ _____
(You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
Life \$ _____
Disability \$ _____
Involuntary Unemployment Insurance \$ _____
Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to: _____ \$ _____
Payable to: _____ \$ _____
Payable to: _____ \$ _____
Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____."

Figure: 7 TAC §90.203(b)(7)(A)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 on that portion of the cash advance that is \$1,500.00 or less; and
- \$8.00 per \$100.00 on that portion of the cash advance that is greater than \$1,500.00 through \$12,500.00.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Figure: 7 TAC §90.203(b)(7)(C)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$2,500.00 or less; (2) 24% on the unpaid cash advance that is greater than \$2,500.00 through \$5,250.00; and (3) 18% on the unpaid cash advance that is greater than \$5,250.00 through \$12,500.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(7)(E)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$2,500.00 or less; (2) 24% on the unpaid cash advance that is greater than \$2,500.00 through \$5,250.00; and (3) 18% on the unpaid cash advance that is greater than \$5,250.00 through \$12,500.00. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

Figure: 7 TAC §90.203(b)(11)

"PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

| | | |
|--|----------|-------------|
| <input type="checkbox"/> Personal Property Insurance | \$ _____ | Term _____ |
| <input type="checkbox"/> Single Interest Insurance (Vehicle) | \$ _____ | Term _____" |

Figure: 7 TAC §90.203(b)(12)

"Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____.

☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____.

☐ Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____.

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____ "

Figure: 7 TAC §90.204(a)(7)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____
 CREDITOR / LENDER _____
 ADDRESS _____

DATE OF NOTE _____
 BORROWER _____
 ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

| | | | |
|--|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
| % | \$ | \$ | \$ |

My Payment Schedule will be:

| | | |
|--------------------|--------------------|-----------------------|
| Number of Payments | Amount of Payments | When Payments Are Due |
| | | |
| | | |

Security: You will have a security interest in the following described collateral _____.
 If checked, Borrower is giving a security interest in:
☐ Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐ Personal Property ☐ Other
 Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
 Prepayment: If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty.
 Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

| | |
|--|----------|
| 1. Amount Financed: (2+3+4) | \$ _____ |
| 2. Amount given to me directly | \$ _____ |
| 3. Amount paid on my account (Net Balance - Prior Account) | \$ _____ |
| 4. Amount paid to others on my behalf (A + B + C + D + E + F) (You may be retaining a portion of this amount.) | \$ _____ |
| A. Cost of personal property insurance paid to insurance company | \$ _____ |
| B. Cost of single-interest insurance paid to insurance company | \$ _____ |
| C. Cost of optional credit insurance paid to insurance company or companies | |
| Life | \$ _____ |
| Disability | \$ _____ |
| Involuntary Unemployment Insurance | \$ _____ |
| Total C: | \$ _____ |
| D. Non-Filing Insurance paid to insurance company | \$ _____ |
| E. Official fees paid to government agencies | \$ _____ |
| F. Payable to: _____ | \$ _____ |
| Payable to: _____ | \$ _____ |
| Payable to: _____ | \$ _____ |
| Total F: | \$ _____ |
| 5. Prepaid Finance Charge (Administrative Fee) | \$ _____ |

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance \$ _____ Term _____

☐ Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____

☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occ.state.tx.us, (512) 936-7600 - (800) 538-1579.

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi la Forma Informe de Prestamo _____
I received the Spanish Disclosure.

Figure: 7 TAC §90.204(a)(8)

CONSUMER CREDIT DISCLOSURE - PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____

DATE OF NOTE _____

CREDITOR / LENDER _____

BORROWER _____

ADDRESS _____

ADDRESS _____

"I" and "me" and similar words mean each person who signs as a Borrower. "You" and "your" and similar words mean the Lender.

| | | | |
|--|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$ | FINANCE CHARGE The dollar amount the credit will cost me. \$ | Amount Financed The amount of credit provided to me or on my behalf. \$ | Total of Payments The amount I will have paid after I have made all payments as scheduled. \$ |
|--|---|--|--|

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the following described collateral _____.

If checked, Borrower is giving a security interest in:

☐ Motor Vehicle ☐ Property Purchased with the Money from this Loan ☐ Personal Property ☐ Other

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I promise to pay the cash advance plus the accrued interest to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment. If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. [Finance Charge Earnings and Refund Method clause]

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

I will be in default if:

- I do not timely make a payment;
- I break any promise I made in this agreement;
- I allow a judgment to be entered against me or the collateral;
- I sell, lease, or dispose of the collateral;
- I use the collateral for an illegal purpose; or
- you believe in good faith that I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan documents.

OPTION A

ITEMIZATION OF AMOUNT FINANCED

1. Amount Financed: (2+3+4) \$ _____
2. Amount given to me directly \$ _____
3. Amount paid on my account (Net Balance - Prior Account) \$ _____
4. Amount paid to others on my behalf (A + B + C +D + E + F) \$ _____
 (You may be retaining a portion of this amount.)
 - A. Cost of personal property insurance paid to insurance company \$ _____
 - B. Cost of single-interest insurance paid to insurance company \$ _____
 - C. Cost of optional credit insurance paid to insurance company or companies
 - Life \$ _____
 - Disability \$ _____
 - Involuntary Unemployment Insurance \$ _____
 - Total C: \$ _____
 - D. Non-Filing Insurance paid to insurance company \$ _____
 - E. Official fees paid to government agencies \$ _____
 - F. Payable to: _____ \$ _____
 - Payable to: _____ \$ _____
 - Payable to: _____ \$ _____
 - Total F: \$ _____
5. Prepaid Finance Charge (Administrative Fee) \$ _____

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. If I buy personal property insurance through you, the rate is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Personal Property Insurance \$ _____ Term _____
☐ Single Interest Insurance (Vehicle) \$ _____ Term _____

Credit insurance is optional.

Credit life insurance, credit disability insurance and involuntary unemployment insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost.

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____
☐ Credit Involuntary Unemployment Insurance, one borrower \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's signature: _____ Date: _____

Co-Borrower's signature: _____ Date: _____

I agree:

1. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.
2. I promise that all information I gave you is true.
3. If I am in default, you may require me to repay the entire unpaid principal balance, and any accrued interest at once. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe. If you don't enforce your rights every time, you can still enforce them later. If this debt is referred to an attorney for collection, I will pay any attorney fees set by the court plus court costs.
4. I understand that you may seek payment from only me without first looking to any other Borrower.
5. I don't have to pay interest or other amounts that are more than the law allows.
6. If any part of this contract is declared invalid, the rest of the contract remains valid.
7. **This written loan agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this loan agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.**
8. If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.
9. Federal law and Texas law apply to this contract.

This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (512) 936-7600 - (800) 538-1579.

I agree to the terms of this contract. I received a completed copy on _____.

X _____
Borrower
X _____
Borrower

Recibi la Forma Informe de Prestamo _____
I received the Spanish Disclosure.

Figure: 7 TAC §90.204(a)(9)

| SECURITY AGREEMENT | |
|------------------------------|--------------------|
| ACCOUNT / CONTRACT NO. _____ | DATE OF NOTE _____ |
| CREDITOR / LENDER _____ | BORROWER _____ |
| ADDRESS _____ | ADDRESS _____ |
| _____ | _____ |

"I" and "me" mean each person who signs as a Borrower. "You" means the Lender/Secured Party.

We are entering into this security agreement at the same time that we are entering into a loan.

In exchange for the loan referenced above, I agree to the following terms and conditions:

1. To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, improvements and attachments to the property, insurance refunds, and proceeds.
2. I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you.
3. I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission.
4. I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally.
5. Any change to this security agreement has to be in writing. Both you and I have to sign it.
6. Any default under my agreements with you will be a default of this security agreement.
7. If there is a default, you can take the collateral. You will only do this lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest.

DESCRIBE THE COLLATERAL COVERED BY THIS SECURITY AGREEMENT:

Borrower acknowledges receipt of a signed copy of this Security Agreement, signed this _____ day of _____, 20_____.

Accepted by Secured Party:

X _____
Borrower / Debtor

By: _____

X _____
Co-Borrower / Debtor

Name & Title: _____

Figure: 7 TAC §90.304(a)(7)

CONSUMER CREDIT DISCLOSURE – PROMISSORY NOTE

ACCOUNT / CONTRACT NO. _____ DATE OF NOTE _____
 CREDITOR / LENDER _____ BORROWER _____
 ADDRESS _____ ADDRESS _____

"I" and "me" means each person who signs as a Borrower. "You" means the Lender.

| | | | |
|---|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % | FINANCE CHARGE The dollar amount the credit will cost me. \$ | Amount Financed The amount of credit provided to me or on my behalf. \$ | Total of Payments The amount I will have paid after I have made all payments as scheduled. \$ |
|---|---|--|--|

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the following described collateral _____.
 Late Charge: If any part of a payment is unpaid for 10 days after it is due, (Option 1:) the late charge will be 5% of the scheduled payment. OR (Option 2:) you can charge me a late charge. If the amount financed is less than \$100, the late charge will be 5% of the amount of the installment. If the amount financed is \$100 or more, the late charge will be the greater of \$10 or 5% of the amount of the installment.
 Prepayment: If I pay off early, I may be entitled to a refund of part of the finance charge.
 Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

ITEMIZATION OF THE FINANCE CHARGE

Acquisition Charge.....\$ _____
 Installment Account Handling Charge.....\$ _____

ITEMIZATION OF THE AMOUNT FINANCED

Previous Account.....# _____
 Late Charge on Previous Account.....\$ _____
 Previous Balance.....\$ _____
 Less Refund.....\$ _____
 Net Balance Renewed.....\$ _____
 Cash to me.....\$ _____
 Amount Financed.....\$ _____

I promise to pay the Total of Payments to the order of you, the Lender. I will make the payments at your address above. I will make the payments on the dates and in the amounts shown in the Payment Schedule. If I don't pay all of the payment within 10 days after it is due, you can charge me a late charge. (Option 1:) The late charge will be 5% of the scheduled payment. OR (Option 2:) If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be at a rate of 18% per year and will begin the day after the final payment becomes due.

I can make a whole payment early. The acquisition charge on this loan will not be refunded if I pay off early. If I pay all I owe before the beginning of the last monthly period, I will save part of the installment account handling charge. You will figure the amount I save by the sum of the periodic balances method. This method is explained in the Finance Commission rules. You don't have to refund or credit any amount less than \$1.

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules. I agree to pay you a fee of up to \$30 for a returned check. You can add the fee to the amount I owe or collect it separately.

If I break any of my promises in this document, you can demand that I immediately pay all that I owe. You can also do this if you in good faith believe that I am not going to be willing or able to keep all of my promises. I agree that you don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

If I am giving collateral for this loan, I will see the separate security agreement for more information and agreements.

I will keep all of my promises in this document. If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan document. I promise that all information I gave you is true.

If you don't enforce your rights every time, you can still enforce them later. Federal law and Texas law apply to this contract. I don't have to pay interest or other amounts that are more than the law allows.

Any change to this agreement has to be in writing. Both you and I have to sign it. You can mail any notice to me at my last address in your records. Your duty to give me notice will be satisfied when you mail it.

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occ.state.tx.us; (512) 936-7600 – (800) 538-1579.

X _____
 Borrower
 X _____
 Co-Borrower

Reciba la Forma Informa de Prestamo _____
 I received the Spanish Disclosure.

Figure: 7 TAC §90.304(a)(8)

| SECURITY AGREEMENT | |
|------------------------------|--------------------|
| ACCOUNT / CONTRACT NO. _____ | DATE OF NOTE _____ |
| CREDITOR / LENDER _____ | BORROWER _____ |
| ADDRESS _____ | ADDRESS _____ |
| _____ | _____ |

"I" and "me" means each person who signs as a Borrower. "You" means the Lender/Secured Party.

We are entering into this security agreement at the same time that we are entering into a loan.

In exchange for the loan referenced above, I agree to the following terms and conditions:

1. To secure this loan, I give you a security interest in the collateral. The collateral includes the property listed below, anything that becomes attached to it, and all proceeds of the collateral. This security interest also secures all other debt I owe you now. I understand that all collateral that I have given to secure loans may also be used to secure this and any other loans you may make to me.
2. I own the collateral. I won't sell or transfer it without your written permission. I won't allow anyone else to have an interest in the collateral except you.
3. I will keep the collateral at my address shown above. I will promptly tell you in writing if I change my address. I won't permanently remove the collateral from Texas unless you give me written permission.
4. I will timely pay all taxes and license fees on the collateral. I will keep it in good repair. I won't use the collateral illegally.
5. Any change to this security agreement has to be in writing. Both you and I have to sign it.
6. Any default under my agreements with you will be a default of this security agreement.
7. Federal and Texas law apply to this security agreement.
8. If I don't keep any of my promises, you can take the collateral. You will only take the collateral lawfully and without a breach of the peace. If you take my collateral, you will tell me how much I have to pay to get it back. If I don't pay you to get the collateral back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. My right to get the collateral back ends when you sell it. You can use the money you get from selling it to pay amounts the law allows, and to reduce the amount I owe. If any money is left, you will pay it to me. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest.

DESCRIBE THE COLLATERAL COVERED BY THIS SECURITY AGREEMENT:

Borrower acknowledges receipt of a signed copy of this Security Agreement, signed this ____ day of _____, 20 ____.

| | |
|------------------------|----------------------------|
| | Accepted by Secured Party: |
| X _____ Borrower | By: _____ |
| X _____ Co-Borrower | Name & Title: _____ |

Figure: 7 TAC §90.403(b)(2)

| | | | |
|---|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. <div style="text-align: right;">%</div> | FINANCE CHARGE The dollar amount the credit will cost me. <div style="text-align: right;">\$</div> | Amount Financed The amount of credit provided to me or on my behalf. <div style="text-align: right;">\$</div> | Total of Payments The amount I will have paid after I have made all payments as scheduled. <div style="text-align: right;">\$</div> |
|---|---|--|--|

My Payment Schedule will be:

| <u>Number of Payments</u> | <u>Amount of Payments</u> | <u>When Payments Are Due</u> |
|---------------------------|---------------------------|------------------------------|
| | | |
| | | |

Security: You will have a security interest in my homestead.
Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Figure: 7 TAC §90.403(b)(8)(A)

"The annual rate of interest is ____%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.403(b)(8)(B)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.403(b)(8)(C)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest."

Figure: 7 TAC §90.403(b)(10)

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead."

Figure: 7 TAC §90.403(b)(11)

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. We will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.403(b)(12)

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

 Borrower's Signature Date

| Premium Due with the First Month's Loan Payment | First Year Premium | Insurance Type: |
|---|-----------------------|--------------------|
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |

 Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

Figure: 7 TAC §90.403(b)(25)

"Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.403(c)(1)(I)

"The Riders include (*check box as applicable*):

- ☐ Texas Home Equity Condominium Rider
☐ Texas Home Equity Planned Unit Development Rider
☐ Other: _____"

Figure: 7 TAC §90.403(c)(3)

"I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document."

Figure: 7 TAC §90.403(c)(5)

"I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement."

Figure: 7 TAC §90.403(c)(6)

"I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
- b. leasehold payments or Ground Rents on My Homestead, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full."

Figure: 7 TAC §90.403(c)(7)

"I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice."

Figure: 7 TAC §90.403(c)(8)

"I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tacking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe."

Figure: 7 TAC §90.403(c)(11)

"I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

- a. gives you materially false, misleading, or inaccurate information or statements; or
- b. fails to provide material information regarding the loan; or
- c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable."

Figure: 7 TAC §90.403(c)(12)

"You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

- a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease."

Figure: 7 TAC §90.403(c)(13)

"Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section."

Figure: 7 TAC §90.403(c)(15)

"I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor;
- c. only grants the person's interest in My Homestead under the terms of this Security Document; and
- d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors."

Figure: 7 TAC §90.403(c)(16)

"If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead."

Figure: 7 TAC §90.403(c)(19)

"As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action."

Figure: 7 TAC §90.403(c)(22)

"I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission."

Figure: 7 TAC §90.403(c)(23)

"A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

- a. received my notice;
- b. had a reasonable amount of time to correct the violation; and
- c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

Figure: 7 TAC §90.403(c)(24)

"Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup."

Figure: 7 TAC §90.403(c)(25)

"You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding."

Figure: 7 TAC §90.403(c)(26)

"You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to My Homestead that cannot be defeated; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order."

Figure: 7 TAC §90.403(c)(28)

"You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and against the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
- b. affect your right to any promise or condition of the Loan Agreement."

Figure: 7 TAC §90.403(c)(32)

"One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful."

Figure: 7 TAC §90.403(c)(33)

"I agree that you waive all terms in any of your current or future loan documentation that:

- a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
- b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
- c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
- d. creates a personal guaranty."

Figure: 7 TAC §90.403(c)(35)

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it.

(DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____(seal)
-Borrower

Printed Name: _____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

_____(seal)
-Borrower"

(Acknowledgment on following page)

Figure: 7 TAC §90.404(a)(7)

TEXAS HOME EQUITY NOTE (Fixed Rate – Second Lien)

**THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION.**

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS _____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

| | | | |
|---|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
| _____ % | _____ \$ | _____ \$ | _____ \$ |
| My Payment Schedule will be: | | | |
| Number of Payments | Amount of Payments | When Payments Are Due | |
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |
| Security: You will have a security interest in my homestead. Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment. Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. (True Daily Earnings Method): If I pay off early, I will not have to pay a penalty. Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties. | | | |

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. **Scheduled Installment Earnings Method:** I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. **True Daily Earnings Method:** I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

Scheduled Installment Earnings Method: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. **True Daily Earnings Method:** I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. DISHONORED CHECK FEE

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the homestead unless you agree in writing;
- d. I sell, lease, or dispose of the homestead;
- e. I use the homestead for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. We will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance \$ _____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| Premium Due with the First Month's Loan Payment | First Year Premium | Insurance Type: |
|---|-----------------------|--------------------|
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |

Borrower's Signature Date

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and against the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between us relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. COMPLAINTS AND INQUIRIES NOTICE

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(512) 936-7600 – (800) 538-1579

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

**THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6),
ARTICLE XVI OF THE TEXAS CONSTITUTION.**

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

- ☐ Texas Home Equity Condominium Rider
- ☐ Texas Home Equity Planned Unit Development Rider
- ☐ Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ____ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA"

refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at *(Street Address)* *(City)* *(State)* *(Zip Code)* and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
- b. leasehold payments or Ground Rents on My Homestead, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

- a. gives you materially false, misleading, or inaccurate information or statements;
- b. fails to provide material information regarding the loan; or
- c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

- a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor;
- c. only grants the person's interest in My Homestead under the terms of this Security Document; and
- d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

- a. received my notice;
- b. had a reasonable amount of time to correct the violation; and
- c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to My Homestead that cannot be defeated; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and against the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
- b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

- a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
- b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
- c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
- d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

-Borrower

(seal)

Printed Name: _____
(Please Complete)

-Borrower

(seal)

-Borrower

(seal)

-Borrower

(Acknowledgment on following page)

Figure: 7 TAC §90.503(b)(2)

| | | | |
|--|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$ | FINANCE CHARGE The dollar amount the credit will cost me. \$ | Amount Financed The amount of credit provided to me or on my behalf. \$ | Total of Payments The amount I will have paid after I have made all payments as scheduled. \$ |
|--|---|--|--|

My Payment Schedule will be:

| <u>Number of Payments</u> | <u>Amount of Payments</u> | <u>When Payments Are Due</u> |
|---------------------------|---------------------------|------------------------------|
| | | |
| | | |

Security: You will have a security interest in the property.
Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Figure: 7 TAC §90.503(b)(8)(A)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(8)(B)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(8)(C)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.503(b)(10)

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property."

Figure: 7 TAC §90.503(b)(11)

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.503(b)(12)

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

Borrower's Signature Date

| | | |
|--|------------------------------|---------------------------|
| Premium Due with the First Month's <u>Loan Payment</u> | First Year <u>Premium</u> | Insurance <u>Type:</u> |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.503(b)(25)

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.503(c)(1)(H)

"The Riders include (check box as applicable):

- ☐ Texas Purchase Money Condominium Rider
☐ Texas Purchase Money Planned Unit Development Rider
☐ Other: _____"

Figure: 7 TAC §90.503(c)(3)

"I give to the Trustee, in trust, with power of sale, the Property located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document."

Figure: 7 TAC §90.503(c)(5)

"I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement."

Figure: 7 TAC §90.503(c)(6)

"I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time, you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I paid the Loan Agreement in full."

Figure: 7 TAC §90.503(c)(7)

"I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice."

Figure: 7 TAC §90.503(c)(8)

"I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe."

Figure: 7 TAC §90.503(c)(10)

"You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect your interest in the Property, you may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease."

Figure: 7 TAC §90.503(c)(11)

"Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section."

Figure: 7 TAC §90.503(c)(13)

"I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor; and
- c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors."

Figure: 7 TAC §90.503(c)(14)

"If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan, charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial payment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property."

Figure: 7 TAC §90.503(c)(17)

"As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action."

Figure: 7 TAC §90.503(c)(20)

"I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission."

Figure: 7 TAC §90.503(c)(22)

"Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup."

Figure: 7 TAC §90.503(c)(23)

"You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession."

Figure: 7 TAC §90.503(c)(25)

"You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order."

Figure: 7 TAC §90.503(c)(27)

"You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
- b. affect your right to any promise or condition of the Loan Agreement."

Figure: 7 TAC §90.503(c)(28)

"One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful."

Figure: 7 TAC §90.503(c)(32)

"REQUEST FOR NOTICE OF DEFAULT
-----AND FORECLOSURE UNDER SUPERIOR-----
MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action."

**"BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it.
(DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)"**

_____(seal)
-Borrower

_____(seal)
-Borrower

_____(seal)
-Borrower

_____(seal)
-Borrower"

"STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20_____.

(seal)

Notary Public"

Figure: 7 TAC §90.504(a)(7)

PURCHASE MONEY NOTE (Fixed Rate – Second Lien)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS _____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____

PROPERTY ADDRESS: _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
|---|---|---|---|
| % | \$ | \$ | \$ |

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the property.
Late Charge: (Scheduled Installment Earnings Method): If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. (**True Daily Earnings Method:** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. **True Daily Earnings Method:** I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

Scheduled Installment Earnings Method: If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. **True Daily Earnings Method:** I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas

Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

6. DISHONORED CHECK FEE

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| Premium Due with the First Month's Loan Payment | First Year Premium | Insurance Type: |
|---|-----------------------|--------------------|
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |

_____ Borrower's Signature _____ Date _____

_____ Co-Borrower's Signature _____ Date _____

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this agreement must be in writing. Both you and I have to sign written agreements.

18. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

20. COMPLAINTS AND INQUIRIES NOTICE

The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207

Telephone No.: (800) 538-1579

Fax No.: (512) 936-7610

E-mail: consumer.complaints@occc.state.tx.us

Website: www.occc.state.tx.us

21. COLLATERAL

The collateral described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower
_____(Seal)
-Borrower

_____(Seal)
-Borrower
_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

PURCHASE MONEY SECURITY DOCUMENT (Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

- ☐ Texas Purchase Money Condominium Rider
- ☐ Texas Purchase Money Planned Unit Development Rider
- ☐ Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

- a. repayment of the Note, and all extensions and modifications of the Note; and
- b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

- a. to permit you to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
- c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect your interest in the Property, you may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 - 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 - 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

- a. has no duty to pay the sums secured by this Security Document;
- b. is not a surety or guarantor; and
- c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

- a. reduce the amount to the amount permitted; or
- b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date you give me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further

notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
- b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at your option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

-Borrower (seal)

Printed Name: _____
(Please Complete)

-Borrower (seal)

Printed Name: _____
(Please Complete)

-Borrower (seal)

-Borrower (seal)

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

(Seal)

Notary Public

Figure: 7 TAC §90.603(b)(1)

"DATE _____
ACCOUNT/CONTRACT NO. _____"

Figure: 7 TAC §90.603(b)(11)

"If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract."

Figure: 7 TAC §90.603(b)(13)

"Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by __ (name of owner)
_____.

(Seal)

Notary Public

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by __ (name of contractor)
_____.

(Seal)"

Notary Public

Figure: 7 TAC §90.603(b)(14)

"ASSIGNMENT

This lien is transferred and assigned to _____ (third party lender) _____.

Contractor

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by (name of contractor) _____.

Notary Public

(Seal)"

Figure: 7 TAC §90.603(c)(1)

"ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS (include county) _____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: \$ _____

Terms of Payment (principal and interest) _____ "

Figure: 7 TAC §90.603(c)(2)

| | | | |
|--|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
| % | \$ | \$ | \$ |

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the following described property: (property description) _____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Figure: 7 TAC §90.603(c)(10)(A)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(10)(B)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(10)(C)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(c)(13)

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the loan agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default."

Figure: 7 TAC §90.603(c)(14)

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.603(c)(15)

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| | | | | | | |
|--|------------------------------|--------------------------|-------|----------------------|--------------------------|-------|
| Premium Due with the First Month's <u>Loan Payment</u> | First Year <u>Premium</u> | Insurance <u>Type</u> | _____ | Borrower's Signature | _____ | Date |
| \$ | \$ | | | | | |
| \$ | \$ | | | | | |
| \$ | \$ | | | _____ | Co- Borrower's Signature | _____ |
| | | | | | | Date |

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.603(c)(29)

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.603(d)(1)

"DATE _____
ACCOUNT/CONTRACT NO. _____"

Figure: 7 TAC §90.603(d)(14)

"I promise that:

1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and
2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;
2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and
3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed."

Figure: 7 TAC §90.603(d)(15)

"I agree to:

1. pay timely all taxes and assessments on the Property;
2. preserve the lien's priority as it is established in this Contract;
3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;
4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;
5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:
 - a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;
 - b. flood insurance, if the property is located in a flood hazard area; and
 - c. any other insurance coverage that you or your transferees may reasonably require;
6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;
7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;
8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and
9. keep any buildings occupied as required by the insurance policy."

Figure: 7 TAC §90.603(d)(16)

"You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.
2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond."

Figure: 7 TAC §90.603(d)(17)

"You have the following rights:

1. You may appoint in writing a substitute Trustee.
2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.
3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.
4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.
5. After notice of default plus twenty-one days, you may:
 - a. declare the unpaid principal balance and earned interest on the Note immediately due;
 - b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
 - c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt."

Figure: 7 TAC §90.603(d)(18)

"If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract."

Figure: 7 TAC §90.603(d)(19)

- "1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.
2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.
3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.
4. Statements in any Trustee's deed conveying the Property are assumed to be true.
5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.
6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.
7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.
8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.
9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.
10. I do not have to pay interest or other amounts that are more than Applicable Law allows.
11. Where appropriate, singular nouns and pronouns include the plural.
12. The word "may" gives sole discretion without imposing any duty to take action."

Figure: 7 TAC §90.603(d)(21)

"Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by _____ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by _____ (name of contractor) _____.

Notary Public

(Seal)"

Figure: 7 TAC §90.603(d)(22)

"ASSIGNMENT

This lien is transferred and assigned to _____ (third party lender) _____.

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20__ by _____ (name of contractor) _____.

Notary Public

(Seal)"

Figure: 7 TAC §90.603(e)(1)

"ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS (include county) _____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____ "

Figure: 7 TAC §90.603(e)(2)

| | | | |
|--|---|--|--|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
| % | \$ | \$ | \$ |

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |
| | | |

Security: You will have a security interest in the following described property: (property description) _____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Figure: 7 TAC §90.603(e)(10)(A)

“The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.”

Figure: 7 TAC §90.603(e)(10)(B)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(e)(10)(C)

"The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe."

Figure: 7 TAC §90.603(e)(13)

"I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default."

Figure: 7 TAC §90.603(e)(14)

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

Figure: 7 TAC §90.603(e)(15)

"Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

☐ Credit Life, one borrower \$ _____ ☐ Credit Life, both borrowers \$ _____ Term _____
☐ Credit Disability, one borrower \$ _____ ☐ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| Premium Due with the First Month's <u>Loan Payment</u> | First Year <u>Premium</u> | Insurance <u>Type</u> | Borrower's Signature | Date |
|--|------------------------------|--------------------------|--------------------------|------|
| \$ _____ | \$ _____ | | | |
| \$ _____ | \$ _____ | | | |
| \$ _____ | \$ _____ | | Co- Borrower's Signature | Date |

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium."

Figure: 7 TAC §90.603(e)(30)

"Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

| | |
|--------------------|--------------------|
| _____ -Borrower | _____ -Borrower |
| _____ -Borrower | _____ -Borrower |

(Sign Original Only)

(Option for witness signatures)"

Figure: 7 TAC §90.603(f)(2)

"I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust."

Figure: 7 TAC §90.603(f)(3)

"I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement."

Figure: 7 TAC §90.603(f)(4)

"I will pay Lender an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

- a. to permit Lender to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full."

Figure: 7 TAC §90.603(f)(5)

"I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
- c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice."

Figure: 7 TAC §90.603(f)(6)

"I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time remappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe."

Figure: 7 TAC §90.603(f)(8)

"Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease."

Figure: 7 TAC §90.603(f)(9)

"Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section."

Figure: 7 TAC §90.603(f)(11)

"I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

- a. will not have to repay the Note;
- b. is not a surety or guarantor; and,
- c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors."

Figure: 7 TAC §90.603(f)(15)

"As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and**
- b. the word "may" gives discretion without imposing any duty to take action."**

Figure: 7 TAC §90.603(f)(19)

"Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;**
- b. the action required to cure the default;**
- c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and**
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.**

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession."

Figure: 7 TAC §90.603(f)(20)

"Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order."

Figure: 7 TAC §90.603(f)(21)

"I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and,
- e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission."

Figure: 7 TAC §90.603(f)(24)

"One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at Lender's option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful."

Figure: 7 TAC §90.603(f)(30)

"Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or,
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup."

Figure: 7 TAC §90.603(f)(31)

"Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
- b. affect Lender's right to any promise or condition of the Loan Agreement."

Figure: 7 TAC §90.603(f)(33)

**"REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST"**

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action."

Figure: 7 TAC §90.603(f)(34)

"BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it.
(DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By: _____

_____ (seal)
-Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
-Borrower

Printed Name: _____
(Please Complete)

_____ (seal)
-Borrower

_____ (seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by
(name of owner) _____.

(Seal) _____
Notary Public

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by
(name of contractor) _____.

(Seal)" _____
Notary Public

Figure: 7 TAC §90.604(a)(1)

"Your Right to Cancel

You are entering into a transaction that will result in a (mortgage/lien/security interest) (in/on) your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is _____; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the (mortgage/lien/security interest) is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the (mortgage/lien/security interest) (on/in) your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at:

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of:

(date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL.

Consumer's Signature

Date"

Figure: 7 TAC §90.604(a)(2)

"TEXAS CONSTITUTION HOMESTEAD REQUIREMENTS

If the Work includes repairing or remodeling, the following provisions apply. You and I have complied with the following legal rights and duties:

1. **Notice of Cancellation.** I may cancel any contract or agreement with you regarding repairing or remodeling without penalty or charge within three days after you and I sign this Contract.
2. **Place of Signing Contract.** This Contract was signed at the office of: (a) the Lender; (b) an attorney at law; or (c) a title company.
3. **Five-Day Waiting Period.** The Contract and this Note have not been executed by me or my spouse before the fifth day after I applied in writing for an extension of credit for the Work."

Figure: 7 TAC §90.604(a)(5)

"NOTICE OF CANCELLATION

(enter date of transaction)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature) "

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE (Second Lien)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
 - a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
 - a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __ (third party lender) _____.

Contractor

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(13)

Mechanic's Lien Note (Second Lien- Home Improvement)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS (include county) _____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

| | | | |
|---|--|---|---|
| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. % \$ | FINANCE CHARGE The dollar amount the credit will cost me. \$ | Amount Financed The amount of credit provided to me or on my behalf. \$ | Total of Payments The amount I will have paid after I have made all payments as scheduled. \$ |
| My Payment Schedule will be: | | | |
| Number of Payments | Amount of Payments | When Payments Are Due | |
| | | | |
| | | | |
| Security: You will have a security interest in the following described property: (property description) _____ Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment. Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. (True Daily Earnings Method): If I pay off early, I will not have to pay a penalty. Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties. | | | |

SECURITY FOR PAYMENT

Liens created in the Contract secure this Note.

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method:

I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method:

I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this loan agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

DISHONORED CHECK FEE

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the loan agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the loan agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| Premium Due with the First Month's Loan Payment | First Year Premium | Insurance Type: | Borrower's Signature | Date |
|---|-----------------------|--------------------|----------------------|------|
| \$ _____ | \$ _____ | | | |
| \$ _____ | \$ _____ | | | |
| \$ _____ | \$ _____ | | | |

Co-Borrower's Signature _____ Date _____

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than applicable law allows.

SAVINGS CLAUSE

If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with the law will be modified to comply with the law. The rest of the loan agreement remains valid.

PRIOR AGREEMENTS

This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements and there are none. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements.

APPLICATION OF LAW

Federal law and Texas law apply to this loan agreement.

COMPLAINTS AND INQUIRIES NOTICE

The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(512) 936-7600 – (800) 538-1579

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note. .

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT, POWER OF SALE, AND DEED OF TRUST (Second Lien)

DATE _____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.
- (G) "Completion Date" means (date on which the Work will be completed).
- (H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.
- (I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.
- (J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.
- (K) "Applicable Law" means all controlling applicable federal, state, and local law.
- (L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.
- (M) "Forcible Detainer" means a lawsuit to remove a person from the Property.
- (N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.
- (O) "Successor in Interest" means any party that has taken title to the Property.
- (P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within ____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. \$ _____) when the Work is completed.

NOTE PAYABLE TO LENDER

In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____ dollars (U.S. \$ _____).

LIEN TO SECURE NOTE

To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

EXCEPTIONS TO CONVEYANCE AND WARRANTY

The exceptions to conveyance and warranty are:

(List any exceptions to conveyance and warranty.)

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

OWNER'S PROMISES AND RIGHTS

I promise that:

1. I own the Property in "fee simple," subject to the section in this Contract named "Exceptions to Conveyance and Warranty"; and
2. I will provide notice to Lender if I learn of a lien or claim for labor or material on the Property that relates to the Contract.

You agree that I have the following rights:

1. Despite anything to the contrary in this Contract, Lender may keep all amounts under sections 53.101 and 53.081 of the Texas Property Code until thirty days after the Work is completed;
2. I may deduct enough money from payments on the Note to the Lender to pay a lien or claim for labor or material provided to you that you are obligated to pay. I will still owe the amount in the Note; and
3. Without affecting the lien created by this Contract, I may use insurance proceeds to restore destroyed or damaged property for a loss occurring before the Work is completed.

OWNER'S DUTIES

I agree to:

1. pay timely all taxes and assessments on the Property;
2. preserve the lien's priority as it is established in this Contract;

3. pay all prior lien notes that I am responsible to pay and abide by all prior lien instruments;
4. because this Contract is for improvements to the Property, keep the Property other than those improvements in good repair and condition during the Work;
5. except to the extent that you are required to insure the Work during its progress, keep at my cost and expense, and in a form acceptable to you or your transferees, insurance policies having the following coverages issued by an insurance company or companies authorized to engage in the insurance business in Texas with a financial rating acceptable to you or your transferees:
 - a. property insurance covering all improvements located on the Property in an amount not more than the actual amount of unpaid debt or the amount of their full replacement cost, whichever is less, containing a standard mortgage clause, provided that the amounts of coverage meet all coinsurance requirements of the policy;
 - b. flood insurance, if the property is located in a flood hazard area; and
 - c. any other insurance coverage that you or your transferees may reasonably require;
6. deliver the insurance policy to you within ten days of the date of the Contract and deliver renewals to you at least fifteen days before expiration;
7. I MAY PROVIDE THE INSURANCE REQUIRED OF ME BY THIS CONTRACT EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH LIKE COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS;
8. comply with all laws, ordinances, and restrictive covenants applicable to the Property; and
9. keep any buildings occupied as required by the insurance policy.

CONTRACTOR'S DUTIES

You agree that:

1. Until the Work is completed, you will insure the Work against loss or damage. You will insure the Work in the amount of any unpaid debt or the full replacement cost, whichever is less. The parties to this Contract will be beneficiaries of this insurance according to their respective interests. If you do not provide this insurance, you will bear any loss to the Work.
2. If any other lien or claim is filed against the Property, you will pay for its removal or provide a statutory bond.

CONTRACTOR'S RIGHTS

You have the following rights:

1. You may appoint in writing a substitute Trustee.
2. After completing the Work, you may apply any insurance proceeds to either (a) reduce the Note or (b) repair or replace damaged or destroyed improvements.
3. If I fail to carry out any of my duties other than providing insurance, you may carry out the duty. On demand, I will repay you for any amount paid. This amount will include attorneys' fees to an attorney who is not your employee. I will also pay you interest at the contract rate in the Note. If I repay you after the full Note amount is due, I will repay you the after maturity interest rate in the Note. Any amount to be repaid will be secured by this Contract.
4. If I default on the Note or this Lien is foreclosed, I will repay you for reasonable fees to an attorney who is not your employee. I will also repay you for court, collection, and foreclosure costs. The amount to be repaid will be secured by this Contract.
5. After notice of default plus twenty-one days, you may:
 - a. declare the unpaid principal balance and earned interest on the Note immediately due;
 - b. ask Trustee to foreclose this Lien and to give notice of the foreclosure sale under the Texas Property Code; and
 - c. buy the Property at any foreclosure sale and then credit the amount of the bid on the Note.

Notice of default is given when deposited with the United States Postal Service (certified mail, return receipt requested), addressed to me at my current mailing address or, if my current mailing address is unknown, to my last known address as shown in the records of the holder of the debt.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":

- a. to the highest bidder for cash;
 - b. subject to prior liens and exceptions to conveyance and warranty; and
 - c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
- a. expenses of foreclosure, including Trustee's reasonable fee;
 - b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
 - c. any amount required by law to be paid; and
 - d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

GENERAL PROVISIONS

- 1. If you are dismissed from the Work, or you do not complete the Work, the Note amount will be reduced by the amount reasonably necessary to complete the Work. If you are not the Note holder, the holder may complete the Work.
- 2. This Contract is executed, acknowledged, and delivered before any labor has been performed or any material has been furnished for the Work. This Contract is entered into by all Owners with the consent of each Owner's spouse.
- 3. If any of the Property is sold under this Contract, I will immediately move from the Property. If I fail to do so, I will become a Tenant at Sufferance of the purchaser, subject to Forcible Detainer.
- 4. Statements in any Trustee's deed conveying the Property are assumed to be true.
- 5. The Lien is prior to liens created later, even if the Note is extended or part of the Property is released.
- 6. Payments will be applied first to satisfy any portion of the Note that is not secured by this Contract.
- 7. I transfer to you all condemnation proceeds. I also transfer to you all proceeds from a private sale in lieu of condemnation. I further transfer to you all damages caused by public works on or near the Property. After deducting any expenses, including attorneys' fees and court and other lawful costs, you will either release any remaining amounts to me or apply them to reduce the Note. I will immediately give you notice of any actual or threatened proceeding for a taking of all or part of the Property.
- 8. You do not elect remedies by continuing under this Contract, beginning foreclosure, or pursuing any other remedy.
- 9. As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.
- 10. I do not have to pay interest or other amounts that are more than Applicable Law allows.
- 11. Where appropriate, singular nouns and pronouns include the plural.
- 12. The word "may" gives sole discretion without imposing any duty to take action.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

Owner

Owner

Contractor

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of owner) _____.

Notary Public

(Seal)

STATE OF TEXAS

COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __ (name of contractor) _____.

Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to (third party lender)_____

Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by (name of contractor)_____.

(Seal)

Notary Public

Figure: 7 TAC §90.604(a)(15)

Mechanic's Lien Note (Second Lien- Home Improvement)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS (include county) _____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county) _____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

| ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. | FINANCE CHARGE The dollar amount the credit will cost me. | Amount Financed The amount of credit provided to me or on my behalf. | Total of Payments The amount I will have paid after I have made all payments as scheduled. |
|--|--|---|---|
| % | \$ | \$ | \$ |

My Payment Schedule will be:

| Number of Payments | Amount of Payments | When Payments Are Due |
|--------------------|--------------------|-----------------------|
| | | |
| | | |

Security: You will have a security interest in the following described property: (property description) _____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note.

DEFINITIONS

- (A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.
- (B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.
- (C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.
- (D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).
- (E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).
- (F) "Work" means the construction project as agreed in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. \$ _____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is \$ _____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method

as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

DISHONORED CHECK FEE

I agree to pay you a fee of up to \$30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

- a. I do not timely make a payment to the person or place you direct;
- b. I break any promise I made in the Loan Agreement;
- c. I allow a lien to be entered against the Property unless you agree in writing;
- d. I sell, lease, or dispose of the Property;
- e. I use the Property for an illegal purpose; or
- f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance \$ _____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower \$ _____ Credit Life, both borrowers \$ _____ Term _____
Credit Disability, one borrower \$ _____ Credit Disability, both borrowers \$ _____ Term _____

☐ If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

| Premium Due with the First Month's Loan Payment | First Year Premium | Insurance Type: |
|---|-----------------------|--------------------|
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |
| \$ _____ | \$ _____ | |

Borrower's Signature Date

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

- (1) your receipt of my written request for cancellation;
- (2) cancellation under the insurance certificate or policy;
- (3) payment in full of my loan; or
- (4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with the law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements and there are none. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

THIS NOTE SECURED BY A DEED OF TRUST

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

COMPLAINTS AND INQUIRIES NOTICE

The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(512) 936-7600 – (800) 538-1579

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

**TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)**

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

DEFINITIONS

- (A) "Borrower" is _____ Borrower's address is _____.
- (B) "Contractor" is _____ Contractor's address is _____.
- (C) "Lender" is _____ Lender's address is _____.
- (D) "Trustee" is _____ Trustee's address is _____.
- (E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").
- (F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.
- (G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.
- (H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. \$ _____) plus interest.
- (I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).
- (J) "Applicable Law" means all controlling applicable federal, state, and local law.
- (K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.
- (L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (M) "Escrow Items" means those items that are described in Section ____ of this Deed of Trust.
- (N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.
- (O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.
- (P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.
- (Q) "Successor in Interest" means any party that has taken title to the Property.
- (R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."
- (S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at (Street Address) (City) (State) (Zip Code) and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

- a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
- b. leasehold payments or Ground Rents on the Property, if any; and
- c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

- a. to permit Lender to apply the Funds at the time specified under RESPA; and
- b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If

there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

- a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
- b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
- c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

- a. a one-time charge for flood zone determination, certification and tracking services; or
- b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

- a. my rights to any insurance proceeds in an amount not greater than what I owe; and
- b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document.

Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

- a. I fail to perform the promises and agreements contained in the Loan Agreement;
- b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
- c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

- a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
- b. appear in court; or
- c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

- a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
- b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
 1. The amount of Miscellaneous Proceeds multiplied by the result of,
 2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

- a. will not have to repay the Note;
- b. is not a surety or guarantor; and,

- c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

- a. words in the singular will mean and include the plural and vice versa; and
- b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than twenty-one days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

- a. the default;
- b. the action required to cure the default;
- c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
- d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or

before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

- a. on the first Tuesday of a month;
- b. at a time stated in the notice or no later than 3 hours after the time; and
- c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

- a. good title to the Property; and
- b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

- a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
- b. what I owe; and
- c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

- a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
- b. the day required by Applicable Law for the termination of my right to reinstate; or
- c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

- a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
- b. I cure any default of any promise or agreement;
- c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
- d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
- e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

- a. cash;
- b. money order;
- c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
- d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

- a. at Lender's option;
- b. with or without cause; and
- c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

- a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
- b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
- c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
- d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

- a. that is in violation of any Environmental Law;
- b. that creates an Environmental Condition; or
- c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

- a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
- b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
- c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

- a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
- b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

**REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST**

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By: _____

Printed Name: _____
(Please Complete)

(Seal)
-Borrower

Printed Name: _____
(Please Complete)

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by ____ (name of owner) _____.

(Seal)

Notary Public

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by ____ (name of contractor) _____.

(Seal)

Notary Public

Figure: 7 TAC §90.703(a)(2)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo a Plazos)

| | | | |
|---|---|--|--|
| "ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual _____% | "FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito \$ _____ | "Amount Financed" -- Cantidad Financiada "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mí o en mi nombre \$ _____ | "Total of Payments" -- Total de Pagos "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan \$ _____ |
|---|---|--|--|

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.
 ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle.
 ☐ No deseo el detalle.

| My Payment Schedule will be -- Mi Plan de Pagos será | | |
|--|--|---|
| Number of Payments -- Número de Pagos | Amount of Payments -- Cantidad de Cada Pago | When Payments are Due -- Cuando se Vence Cada Pago |

Credit life insurance, credit disability insurance, involuntary unemployment insurance, and the gap waiver agreement are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

-- Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, seguro de desempleo involuntario, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

| Type -- Tipo | Premium -- Prima | Signature -- Firma |
|---|------------------|---|
| Credit Life -- Seguro de Vida para el Deudor | \$ _____ | I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma |
| Credit Disability -- Seguro de Discapacidad para el Deudor | \$ _____ | I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor _____ Signature -- Firma |
| Involuntary Unemployment Insurance -- Seguro de Desempleo Involuntario | \$ _____ | I want Involuntary Unemployment Insurance -- Deseo Seguro de Desempleo Involuntario _____ Signature -- Firma |
| Gap Waiver Agreement -- Acuerdo de Abandono de Seguro Gap | \$ _____ | I want Gap Waiver Agreement -- Deseo Acuerdo de Abandono de Seguro Gap _____ Signature -- Firma |

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo deseo si es aceptable para Usted. Si obtengo el seguro de Usted, pagare \$_____ por un plazo de _____.

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Filing Fees \$_____

Non-filing insurance \$_____

Coutas por Inscripción \$_____

Seguro de no-inscripción \$_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mí se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendría que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §90.703(a)(3)(A)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo)

| | | | |
|--|--|---|--|
| "ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL | "FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO | "Amount Financed" -- Cantidad Financiada | "Total of Payments" -- Total de Pagos |
| _____ % | \$ _____ | \$ _____ | \$ _____ |

| My Payment Schedule will be -- Mi Plan de Pagos será | | |
|--|--|---|
| Number of Payments -- Número de Pagos | Amount of Payments -- Cantidad de Cada Pago | When Payments are Due -- Cuando se Vence Cada Pago |

Security: You will have a security interest in the following described collateral _____.

Garantía: Como garantía Usted tendrá parte (participación) en el siguiente colateral aquí descrito _____.

Late Charge Option 1

Late Charge: If I don't pay an entire payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

Cargos por Retrasos: Si no doy un pago completo dentro de 10 días después de vencerse, me puedes cobrar un cargo por retraso. El cargo por retraso será el 5% de la cantidad del pago.

Late Charge Option 2

Late Charge: For a loan that has an amount financed of less than \$100, the late charge for a payment that is unpaid for 10 days after it is due is 5% of the amount of the installment. For a loan that has an amount financed of \$100 or more, the late charge for a payment that is unpaid for 10 days after it is due is the greater of \$10 or 5% of the amount of the installment.

Cargos por Retrasos: Para un préstamo en el cual la cantidad financiada es menor de \$100, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es 5% de la cantidad del pago. Para un préstamo en el cual la cantidad financiada es de \$100 o más, el cargo por retraso en un pago que no se liquida por 10 días después de vencerse es de \$10 o 5% de la cantidad del pago atrasado, lo que sea mayor.

Figure: 7 TAC §90.703(a)(3)(B)

CONCEPTOS FINANCIEROS

| ITEMIZATION OF THE FINANCE CHARGE -- DETALLE DEL CARGO POR FINANCIAMIENTO | | ITEMIZATION OF THE AMOUNT FINANCED -- DETALLE DE LA CANTIDAD FINANCIADA | |
|---|--|--|---|
| Acquisition Charge -- Cargo por Adquisición | | Previous Account -- | Cuenta Anterior |
| Installment Account Handling Charge -- Cargo por Manejo de Cuenta | | Late Charge on Previous Account -- | Cargo por Retrasos en la Cuenta Anterior |
| | | Previous Balance -- | Saldo Anterior |
| | | Less Refund -- | Menos Reembolso |
| | | Net Balance Renewed -- | Saldo Neto Renovado |
| | | Cash to Me -- | Efectivo entregado a mí |
| | | Amount Financed -- | Cantidad Financiada |

| | | |
|--|----|---|
| "ANNUAL PERCENTAGE RATE" (TASA PORCENTUAL ANNUAL) | -- | "The cost of my credit as a yearly rate" (El costo de mi crédito expresado como tasa anual) |
| "FINANCE CHARGE" (CARGO POR FINANCIAMIENTO) | -- | "The dollar amount the credit will cost me" (La cantidad en dólares que me costara el crédito) |
| "Amount Financed" (Cantidad Financiada) | -- | "The amount of credit provided to me or on my behalf" (La cantidad de crédito otorgada a mí o en mi nombre) |
| "Total of Payments" (Total de Pagos) | -- | "The amount I will have paid after I have made all payments as scheduled" (La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan) |

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §90.703(a)(4)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Préstamo de Segunda Hipoteca)

| | | | |
|--|---|--|--|
| "ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual <div style="text-align: right;">_____ %</div> | "FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito \$ _____ | "Amount Financed" -- Cantidad Financiada "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mí o en mi nombre \$ _____ | "Total of Payments" -- Total de Pagos "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan \$ _____ |
|--|---|--|--|

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization.
 ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle.
 ☐ No deseo el detalle.

| My Payment Schedule will be -- Mi Plan de Pagos será | | |
|--|--|---|
| Number of Payments -- Número de Pagos | Amount of Payments -- Cantidad de Cada Pago | When Payments are Due -- Cuando se Vence Cada Pago |

Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor y seguro de incapacidad para el Deudor no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

| Type -- Tipo | Premium -- Prima | Signature -- Firma |
|--|------------------|--|
| Credit Life -- Seguro de Vida para el Deudor | \$ _____ | I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma |
| Credit Disability -- Seguro de Incapacidad para el Deudor | \$ _____ | I want Credit Disability Insurance -- Deseo Seguro de Incapacidad para el Deudor _____ Signature -- Firma |

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo deseo si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$_____ por un plazo de _____.

Security: You will have a security interest in my homestead.

Garantía: Como garantía Usted tendrá parte (participación) en mi residencia.

Filing Fees \$_____

Cuotas por Inscripción \$_____

Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.

Cargos por Retrasos: Si cualquier parte de un pago queda sin pagar por 10 días después de vencerse, a mí se me puede cobrar el 5% de la cantidad del pago.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendría que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Assumption: Someone buying my house may, subject to conditions, be allowed to assume the remainder of the mortgage on the original terms.

Asunción: Alguien que compre mi propiedad puede, sujeto a ciertas condiciones, asumir el saldo de la hipoteca bajo los términos originales.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Vea los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 7 TAC §90.703(a)(5)

NOTIFICACIÓN DE CRÉDITO AL CONSUMIDOR (Contrato de Menudeo a Plazos para Vehículo Automotor)

| | | | | |
|--|--|---|---|---|
| "ANNUAL PERCENTAGE RATE" -- TASA PORCENTUAL ANUAL "The cost of my credit as a yearly rate" -- El costo de mi crédito expresado como tasa anual _____% | "FINANCE CHARGE" -- CARGO POR FINANCIAMIENTO "The dollar amount the credit will cost me" -- La cantidad en dólares que me costará el crédito \$ _____ | "Amount Financed" -- Cantidad Financiada "The amount of credit provided to me or on my behalf" -- La cantidad de crédito otorgada a mí o en mi nombre \$ _____ | "Total of Payments" -- Total de Pagos "The amount I will have paid after I have made all payments as scheduled" -- La cantidad que habré pagado después de haber efectuado todos los pagos de acuerdo al plan \$ _____ | "Total Sale Price" -- -- Precio de Venta Total "The total cost of my purchase on credit, including down payment of" -- El costo total de mi compra a crédito, incluyendo un enganche de \$ _____ |
|--|--|---|---|---|

ITEMIZATION OF THE AMOUNT FINANCED

I have the right to receive at this time an itemization of the Amount Financed.

☐ I want an itemization. ☐ I do not want an itemization.

DETALLE DEL CARGO POR FINANCIAMIENTO

Tengo el derecho a recibir el detalle del Cargo por Financiamiento ahora.

☐ Deseo el detalle. ☐ No deseo el detalle.

| My Payment Schedule will be -- Mi Plan de Pagos será | | |
|--|--|---|
| Number of Payments -- Número de Pagos | Amount of Payments -- Cantidad de Cada Pago | When Payments are Due -- Cuando se Vence Cada Pago |

Credit life insurance, credit disability insurance, and gap insurance are not required to obtain credit, and will not be provided unless I sign and agree to pay the additional cost.

Seguro de vida para el Deudor, seguro de incapacidad para el Deudor, y acuerdo de seguro gap no se requieren para obtener crédito, y no se proveerá a menos que firme y acuerde pagar el costo adicional.

| Type -- Tipo | Premium -- Prima | Signature -- Firma |
|---|------------------|---|
| Credit Life -- Seguro de Vida para el Deudor | \$ _____ | I want Credit Life Insurance -- Deseo Seguro de Vida para el Deudor _____ Signature -- Firma |
| Credit Disability -- Seguro de Discapacidad para el Deudor | \$ _____ | I want Credit Disability Insurance -- Deseo Seguro de Discapacidad para el Deudor _____ Signature -- Firma |
| Gap Insurance -- Seguro Gap | \$ _____ | I want Gap Insurance -- Deseo Seguro Gap _____ Signature -- Firma |

I may obtain property insurance from anyone I want that is acceptable to you. If I get the insurance from you, I will pay \$_____ for the term of _____.

Puedo obtener seguro de propiedad de quien yo deseo si es aceptable para Usted. Si obtengo el seguro de Usted, pagaré \$_____ por un plazo de _____.

Security: You will have a security interest in the motor vehicle being purchased.

Garantía: Como garantía Usted tendrá parte (participación) en el vehículo automotor que está comprando.

Filing Fees \$ _____

Cuotas por Inscripción \$ _____

Late Charge: **[True daily earnings:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Cargo por Retraso: **[Ganancia Diaria Real:]** (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad del pago atrasado. El cargo por retraso sobre la cantidad del pago atrasado se calculará desde la fecha de vencimiento del pago hasta la fecha en que se realice el pago. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% anual del pago programado.

[Scheduled Installment Earnings Method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

[Método de Ganancia de Pagos Programados o suma de los saldos periódicos:] (Opción A:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo sobre la cantidad del pago atrasado basado en la tasa del contrato. (Opción B:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso con tasa del _____% anual sobre la cantidad atrasada. (Opción C:) Si no recibes mi pago completo dentro de 15 días después de vencerse, (10 días si estoy comprando un vehículo comercial de carga pesada), pagaré un cargo por retraso de _____% de la cantidad del pago programado.

Prepayment: If I payoff early, I

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the Finance Charge.

Pago por Adelantado: Si pago por adelantado,

☐ tendría que ☐ no tendré que pagar una penalización.

☐ tendría ☐ no tendré derecho a un reembolso de parte del Cargo por Financiamiento.

Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

Información Adicional: Ver los documentos del contrato para información adicional sobre no-pago, retraso, cualquier re-pago total requerido antes de la fecha de vencimiento, y reembolsos y penalizaciones por pagar por adelantado.

Figure: 30 TAC §114.315(c)(5)(C)

$$\bar{X}_C < \bar{X}_R + \delta - S_p \cdot \sqrt{t/a} \cdot \sqrt{2n-2}$$

- Where:
- \bar{X}_C = Average emissions during testing with the candidate fuel.
 - \bar{X}_R = Average emissions during testing with the reference fuel.
 - δ = Tolerance level equal to 1% of \bar{X}_R for oxides of nitrogen (NO_x), and 2% of \bar{X}_R for particulate matter (PM).
 - S_p = Pooled standard deviation.
 - $t(a, 2n-2)$ = The one-sided upper percentage point of t distribution with $a = 0.15$ and $2n-2$ degrees of freedom.
 - n = Number of tests of candidate and reference fuel.

Figure: 30 TAC §114.318(b)(2)(C)(i)

$$M6 = (0.0000007 \cdot X^2) - (0.0007 \cdot X) + (0.137)$$

- Where:
- M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.
 - X = The gasoline sulfur level in 2003 in parts per million (ppm).

Figure: 30 TAC §114.318(b)(2)(C)(ii)

$$M6 = (0.000003 \cdot X^2) - (0.0012 \cdot X) + (0.1042)$$

- Where:
- M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.
 - X = The gasoline sulfur level in 2004 in parts per million (ppm).

Figure: 30 TAC §114.318(b)(2)(C)(iii)

$$M6 = (0.000005 \cdot X^2) - (0.0016 \cdot X) + (0.1046)$$

- Where:
- M6 = The percent reduction in oxides of nitrogen (NO_x) emission reductions as determined using factors calculated by MOBILE6.2.
 - X = The gasoline sulfur level in 2005 in parts per million (ppm).

Figure: 30 TAC §114.318(b)(2)(D)

$$(450.56 \cdot (5.78\%))/(GNEI \cdot M6) = \text{Gasoline-to-Diesel Offset Ratio}$$

- Where:
- | | | |
|------|---|--|
| GNEI | = | Total oxides of nitrogen (NO _x) emissions inventory in tons per day attributed to gasoline engines for the counties listed in §114.319(b)(4) of this title as follows: 229.51 tons per day for 2003, 215.37 tons per day for 2004, and 201.24 tons per day for 2005. |
| M6 | = | The appropriate percent reduction as determined using the applicable methodology specified under subparagraph (C) of this paragraph. |

Figure: 30 TAC §114.318(b)(3)(A)

$$(450.56 \cdot (5.78\% - UM))/(GNEI \cdot M6) = \text{Gasoline-to-Diesel Offset Ratio}$$

- Where:
- | | | |
|------|---|--|
| UM | = | Percentage of oxides of nitrogen (NO _x) emission reductions attributed to on-road diesel for 2007 as calculated with the Unified Model. |
| GNEI | = | Total NO _x emissions inventory in tons per day attributed to gasoline engines for the counties listed in §114.319(b)(4) of this title as follows: 229.51 tons per day for 2003, 215.37 tons per day for 2004, and 201.24 tons per day for 2005. |
| M6 | = | The appropriate percent reduction as determined using the applicable methodology specified under paragraph (2)(C) of this subsection. |

Figure: 40 TAC §745.243

| Type of Application | Required Application Materials |
|--|---|
| (1) Application for Listing a Family Home | (A) A completed Listing Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks); and (C) The listing fee. |
| (2) Application for Registering a Child-Care Home | (A) A completed Registration Request Form; (B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (C) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire; (D) Proof of current certification in infant/child/adult CPR; (E) Proof of current certification in first aid, which must include rescue breathing and choking; (F) The registration fee; (G) Verification that the applicant completed the required orientation within one year prior to the date of application; and (H) Proof of a high school diploma or high school equivalent. |
| (3) Application for Licensing a Child Day-Care Operation | (A) A completed Child Day-Care Licensing Application Form; (B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space; (C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director; (D) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter; (E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director; (F) Proof that the corporation is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?); (G) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?); (H) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards; (I) The application fee; and (J) The initial license fee. |

| | |
|---|---|
| (4) Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home | <p>(A) An Application for License to Operate a Residential Child-Care Facility, Child-Placing Agency, or Maternity Home;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;</p> <p>(C) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;</p> <p>(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Residential Controlling Person and Certain Employment Prohibited);</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed child-care administrator;</p> <p>(F) Proof that the corporation is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;</p> <p>(G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title;</p> <p>(H) Policies, procedures, and documentation required to be submitted with the application as stated in applicable minimum standard rules;</p> <p>(I) The application fee; and</p> <p>(J) The initial license fee, if applicable.</p> |
| (5) Application for Certifying a Child Day-Care Operation | <p>(A) A completed Child Day-Care Licensing Application Form;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;</p> <p>(C) A completed Governing Body/Director Designation Form;</p> <p>(D) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;</p> <p>(E) A completed Personal History Statement Form for all persons designated as director or co-director; and</p> <p>(F) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards.</p> |
| (6) Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency and Maternity Home | <p>(A) A completed Application for License to Operate a Residential Child-Care Facility, Maternity Home, or Child-Placing Agency, as appropriate;</p> <p>(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;</p> <p>(C) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;</p> <p>(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter;</p> <p>(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed child-care administrator; and</p> <p>(F) Policies, procedures, and documentation required to be submitted with the application as stated in applicable minimum standard rules.</p> |

Figure: 40 TAC §745.275

| Type of Requirements | Requirements To Be Completed |
|---------------------------------|--|
| (1) Public Notice Requirements | <p>(A) The notice must include:</p> <ul style="list-style-type: none"> (i) Your name and address; (ii) The name and address of the child-care operation, if already established, or the address where you propose to provide child care services; (iii) The date, time, and location of the public hearing; (iv) A statement that a person may submit comments to Licensing concerning the application, the request to increase capacity, or the pending verification of an agency home, instead of or in addition to appearing at the public hearing; (v) The name, address, and telephone number of the person within Licensing to contact with comments; and (vi) A description of the population to be served, the services to be provided, and the licensed capacity requested; <p>(B) If you are applying for a permit, the notice must be published after we accept your application. If you are requesting to amend your permit to increase capacity, the notice must be published after we have evaluated your request to increase capacity. If you are attempting to verify an agency home, the notice must be published before you verify the home;</p> <p>(C) You must publish the notice about the public hearing at least 10 days before the date of the public hearing;</p> <p>(D) You must publish the notice in a newspaper of general circulation in the community where your child care services are or will be provided; and</p> <p>(E) You must provide a copy of the notice to the school district superintendent, the governing body of the community, and the local law enforcement agency at least 10 work days before the hearing.</p> |
| (2) Public Hearing Requirements | <p>(A) You must hold the hearing in a location easily accessible to the community where the services are or will be provided;</p> <p>(B) You must schedule the hearing and open it for at least four hours during the normal business day (Monday - Friday) or early evening hours;</p> <p>(C) If you are applying for a permit, you must hold the hearing no later than one month after the date that we accept your application. If you are requesting to amend your permit to increase capacity, you must hold the hearing after we have evaluated your request to increase capacity. If you are a child-placing agency attempting to verify an agency home, you must hold the hearing before you verify the home;</p> <p>(D) You must notify us of the time, date, and location of the hearing at least 10 days before the hearing;</p> <p>(E) You must provide a verbatim record of the testimony given at the hearing; and</p> <p>(F) You must facilitate the hearing.</p> |

| | |
|---|--|
| (3) Report of Public Comment from the Community to be Completed | <p>Within 10 work days of the hearing, you must submit to us the verbatim record of the hearing and a public comment summary report on the Results of Public Hearing form that we furnish you with the following documentation:</p> <p>(A) That you gave the school district superintendent, local law enforcement, and the governing body of the community an opportunity to comment on the application, the request to amend your permit to increase capacity, or the pending verification of an agency home;</p> <p>(B) Your responses to any negative comments;</p> <p>(C) The amount of local resources available to support children you propose to serve, including physical and mental health services, educational services, law enforcement, and other services;</p> <p>(D) The impact of the proposed services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children you propose to serve, including the estimated impact on the current ratio in the school in relation to the average ratio statewide, and the ratio in terms of the probability of adverse impact on children in care;</p> <p>(E) The impact of the proposed services on the community and the effect on opportunities for social interaction for the children proposed to be served, including social and youth groups, spiritual and religious organizations, and youth employment groups or agencies; and</p> <p>(F) Any other documentation available to support the position of the report.</p> |
|---|--|

Figure: 40 TAC §745.505

| Type and Amount of Fee | When the Fee is Due | Consequences for Failure to Pay Fee on Time |
|--|---|---|
| (1) Application/request processing fee: \$20 | Before we accept your application/request for a listing | We will return your application/request as incomplete. |
| (2) Annual listing fee: \$20 | On the anniversary date of your listing | If you do not pay your fee when it is due, your listing is automatically suspended until you pay your fee. However, if you do not pay your fee within three months after your anniversary date, we may revoke your listing. |

Figure: 40 TAC §745.507

| Type and Amount of Fee | When the Fee is Due | Consequences for Failure to Pay Fee on Time |
|--|---|---|
| (1) Application/request processing fee: \$35 | Before we accept your application/request for a registration | We will return your application/request as incomplete. |
| (2) Annual fee: \$35 | On the anniversary date of your registration | If you do not pay your fee when it is due, your registration is automatically suspended until you pay your fee. However, if you do not pay your fee within three months after your anniversary date, we may revoke your registration. |
| (3) Background check fee: \$2 per person | At the time you request a background check or on a monthly or quarterly basis | We may suspend and/or revoke your registration. |

Figure: 40 TAC §745.509

| Type and Amount of Fee | When Fee is Due | Consequences for Failure to Pay Fee on Time |
|---|--|---|
| (1) Application processing fee: \$35 | Before we accept your application | We will return your application as incomplete. |
| (2) Initial license fee for an operation (other than a child-placing agency or maternity home): \$35 | Before we accept your application | We will return your application as incomplete. |
| (3) Initial license fee for a child-placing agency or maternity home: \$50 | Before we accept your application | We will return your application as incomplete. |
| (4) Initial renewal fee for an operation (other than a child-placing agency or maternity home): \$35 | Before we renew your initial license | We will deny the renewal of your initial license if you do not pay your fee by your renewal date. |
| (5) Initial renewal fee for a child-placing agency or maternity home: \$50 | Before we renew your initial license | We will deny the renewal of your initial license if you do not pay your fee by your renewal date. |
| (6) Non-expiring license fee for an operation (other than a child-placing agency or maternity home): \$35 + \$1 per licensed capacity | Before we issue you a non-expiring license | We will deny your license if you do not pay your fee by your issuance due date. |
| (7) Non-expiring license fee for a child-placing agency: \$100 | Before we issue you a non-expiring license | We will deny your license if you do not pay your fee by your issuance due date. |
| (8) Non-expiring license fee for a maternity home: \$50 + \$2 per licensed capacity | Before we issue you a non-expiring license | We will deny your license if you do not pay your fee by your issuance due date. |
| (9) Annual license fee for an operation (other than a child-placing agency or maternity home): \$35 + \$1 per licensed capacity | On the anniversary date of your license | If you do not pay your fee when it is due, your license is automatically suspended until you pay your fee. However, if you do not pay your fee within three months after your anniversary, we may revoke your license. |
| (10) Annual license fee for a child-placing agency: \$100 | On the anniversary date of your license | If you do not pay your fee when it is due, your license is automatically suspended until you pay your fee. However, if you do not pay your fee within three months after your anniversary date, we may revoke your license. |

| | | |
|--|---|---|
| (11) Annual license fee for a maternity home: \$50 + \$2 per licensed capacity | On the anniversary date of your license | We will: <ul style="list-style-type: none"> • Suspend your license if you do not pay your fee within one month after your anniversary date; and • Revoke your license if you do not pay your fee within three months after your anniversary date. |
| (12) Amendment fee for an operation (other than a maternity home): \$1 for each child that the current licensed capacity is increased. | Before we issue your amendment | We will deny your request for an increase in capacity. |
| (13) Amendment fee for a maternity home: \$2 for each client that the current licensed capacity is increased. | Before we issue your amendment | We will deny your request for an increase in capacity. |
| (14) Background check fee: \$2 per person | At the time you request a background check or on a monthly or quarterly basis | We may suspend and/or revoke your license. |

Figure: 40 TAC §745.8613(a)

| Type of Remedial Action | Rights When You Disagree With a Remedial Action |
|--|--|
| (1) Corrective Action | If we decide to impose a corrective action, then you have a right to an administrative review regarding the entire action or any of the conditions imposed as part of the action. |
| (2) Adverse Action | If we decide to impose an adverse action, then you have a right to an administrative review and a due process hearing before the State Office of Administrative Hearings. |
| (3) Judicial Action | If we attempt to have the court impose a judicial action, then your rights are before the court. |
| (4) Monetary Action/ Administrative Penalties | If we attempt to impose administrative penalties, then you have the right to a due process hearing before the State Office of Administrative Hearings. In addition, see the Human Resources Code, §42.078 for your rights. |
| (5) Monetary Action/Civil Penalties | If we attempt to have the court impose civil penalties, then your rights are before the court. |

Figure: 40 TAC §745.8875(1)

| If you are... | Then you... |
|---|---|
| (A) Already operating without a current permit, | Must stop operating pending the outcome of the administrative review and/or due process hearing. |
| (B) Operating with an initial license and Licensing is denying your non-expiring license, | May continue to operate pending the outcome of the administrative review and/or due process hearing unless we determine your operation poses an immediate threat or danger to the health or safety of children. |
| (C) Operating with a current permit and asking for an amendment to that permit, | May continue to operate without the amendment, pending the outcome of the administrative review and/or due process hearing. |

Figure: 40 TAC §746.5607

| If the child is... | Then the child must be secured in... |
|--|---|
| (1) Younger than one year and weighs less than 20 pounds | a rear-facing infant safety seat according to the manufacturer's instructions that come with the seat; |
| (2) Younger than one year and weighs more than 20 pounds | a rear-facing convertible child passenger safety seat installed according to the manufacturer's instructions that come with the seat; |
| (3) At least one year old and weighs between 20 and 40 pounds | a child passenger safety seat according to the manufacturer's instructions that come with the seat; |
| (4) Younger than five years old and less than 36 inches in height | a child passenger safety seat or booster seat according to the manufacturer's instructions, anywhere a child sits in a passenger vehicle; |
| (5) Younger than five years old and at least 36 inches in height | a booster seat according to the manufacturer's instructions or properly fitting safety belt, anywhere the child sits in the vehicle; and |
| (6) At least five years old, and at least 36 inches, but younger than 17 years old | a safety belt, anywhere the child sits in the vehicle. |

Figure: 40 TAC §747.5407

| If the child is... | Then the child must be secured in... |
|--|---|
| (1) Younger than one year and weighs less than 20 pounds | a rear-facing infant safety seat according to the manufacturer's instructions that come with the seat; |
| (2) Younger than one year old and weighs more than 20 pounds | a rear-facing convertible child passenger safety seat installed according to the manufacturer's instructions that come with the seat; |
| (3) At least one year old and weighs between 20 and 40 pounds | a child passenger safety seat according to the manufacturer's instructions that come with the seat; |
| (4) Younger than five years old and less than 36 inches in height | a child passenger safety seat or booster seat according to manufacturer's instructions, anywhere a child sits in a passenger vehicle; |
| (5) Younger than five years old and at least 36 inches in height | a booster seat according to manufacturer's instructions or properly fitting safety belt, anywhere the child sits in the vehicle; and |
| (6) At least five years old, and at least 36 inches, but younger than 17 years old | a safety belt, anywhere the child sits in the vehicle. |

Figure: 43 TAC §18.16(a)(1)

| Type of Vehicle | Minimum Insurance Level |
|---|--------------------------------|
| 1. Tow trucks and household goods carriers (gross vehicle weight less than 26,000 lbs.). | \$300,000 |
| 2. Buses designed or used to transport more than 15 passengers (including the driver), but fewer than 26 passengers (not including the driver). | \$500,000 |
| 3. Commercial motor vehicles which are buses with a seating capacity of 15 passengers or fewer (including the driver) operated by a foreign motor carrier and foreign motor private carrier as defined in 49 USC §13102. | \$1,500,000 |
| 4. Buses designed or used to transport 26 passengers or more (not including the driver). | \$5,000,000 |
| 5. Commercial school buses, regardless of the passenger capacity as described in Transportation Code, §643.1015. | \$500,000 |
| 6. Commercial motor vehicles that are buses with a seating capacity of 16 passengers or more (including the driver) operated by a foreign motor carrier or foreign motor private carrier as defined in 49 USC §13102. | \$5,000,000 |
| 7. Farm trucks (gross vehicle weight 48,000 lbs. or more). | \$500,000 |
| 8. Commercial motor vehicles (gross vehicle weight in excess of 26,000 lbs.), including tow trucks. | \$500,000 |
| 9. Commercial motor vehicles, as defined in 49 CFR §390.5, operated by a foreign motor carrier or foreign motor private carrier as defined in 49 USC §13102. | \$750,000 |
| 10. Commercial motor vehicles - Oil listed in 49 CFR §172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR §171.8 and listed in 49 CFR §172.101, but not mentioned in item 10 of this table. | \$1,000,000 |
| 11. Commercial motor vehicles - Hazardous substances, as defined in 49 CFR §171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or any quantity of Division 1.1, 1.2, and 1.3 materials, any quantity of Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR §173.403. | \$5,000,000 |

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Ark-Tex Council of Governments

Request for Proposals for Provision of Regional Law Enforcement Training

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, and Advanced Law Enforcement Training. The period of performance is September 1, 2006 through August 31, 2007.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Brenda Stone, Ark-Tex Council of Governments, P. O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is June 23, 2006, at 5:00 p.m. The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score multiple proposals received. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

TRD-200602450
L. D. Williamson
Executive Director
Ark-Tex Council of Governments
Filed: May 3, 2006

Office of the Attorney General

Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health & Safety Codes. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in *Harris County, Texas and the State of Texas v. Texas Petrochemicals, L.P.*, Cause No. 2006-05464, in the 269th Judicial District Court of Harris County, Texas.

Background: The State, on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), joined in this suit with Harris County to enforce against a violation of the Texas Clean Air Act at a natural gas odorizing facility in Houston, Texas. The defendant is

Texas Petrochemicals, L.P. The violations arise from an emission of air contaminants at the facility that caused nuisance conditions.

Nature of Settlement: The proposed settlement with Texas Petrochemicals, L.P. orders a payment of \$18,000.00 to the Harris County Public Health Ozone Monitoring Network, a supplemental environmental project; \$1,750.00 in attorney's fees, \$750 to the State of Texas and \$1,000 to Harris County; and court costs.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Sarah Jane Utley, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512)463-2096.

TRD-200602423
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 1, 2006

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 21, 2006, through April 27, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 3, 2006. The public comment period for these projects will close at 5:00 p.m. on June 2, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Davis Petroleum Corporation; Location: The project is located in State Tract 114, Galveston Bay, approximately 9.5 miles northeast of the FM 518 and State Highway 146 intersection in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317948; Northing: 3276215. Project Description: The applicant proposes to drill an oil and gas well, install and maintain a well platform, production platform, and lay flow-

lines from the well to the production platform. Approximately 2,667 cubic yards of crushed rock or gravel may be installed within 0.55 acres of open water under the drill rig if necessary. No sales pipeline is proposed at this time. CCC Project No.: 06-0259-F1; Type of Application: U.S.A.C.E. permit application #24056 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in State Tract 204, Galveston Bay, approximately 8.5 miles east-northeast of the FM 518 and State Highway 146 intersection, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317525; Northing: 3272466. Project Description: The applicant proposes to drill an oil and gas well, install and maintain a well platform, production platform, and lay flowlines from the well to the production platform. Approximately 2,667 cubic yards of crushed rock or gravel may be installed within 0.55 acres of open water under the drill rig if necessary. No sales pipeline is proposed at this time. CCC Project No.: 06-0260-F1; Type of Application: U.S.A.C.E. permit application #24057 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: F-W Oil Exploration LLC; Location: The project is located in the OCS Federal Waters, Gulf of Mexico, in North Padre Island Blocks 996, 997, 989, 976, 977, 968, and 967, offshore, Texas. The proposed pipeline would cross the Brazos Santiago Pass Safety Fairway in North Padre Island Blocks 996, 997, and 989 where the pipeline would be buried a minimum of 10 feet deep. Using State Plane Coordinates, Texas South Zone, NAD 27: Pipeline enters fairway: X=2,507,958.24; Y=390,533.30 in Block 996 Pipeline exits fairway: X=2,495,923.45; Y=407,682.72 in Block 989. Project Description: The applicant requests authorization to install, maintain and operate a 12.75-inch natural gas and condensate right-of-way pipeline (approximately 13.14 miles) from North Padre Island Block 996, subsea tie-in point to a subsea tie-in point with Transco's existing 10-inch pipeline; a portion of which intersects the Brazos Santiago Pass Safety Fairway in North Padre Island Blocks 996, 997, and 989. The proposed pipeline route would run parallel to an existing pipeline (Department of the Army Permit 19409). The project site is located in the Gulf of Mexico in Blocks 996, 989, 976, 977, and 968, offshore, Texas. CCC Project No.: 06-0263-F1; Type of Application: U.S.A.C.E. permit application #24125 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Hall-Houston Exploration LP; Location: The project is located approximately 5.67 miles from the Texas coastline in Galveston Area (GA), Freeport Anchorage Area, State Tract (ST) 278L in the Gulf of Mexico, Brazoria County, Texas. The project can be located in State Plane XY Coordinates, NAD 27, Texas South Central (feet) at X=3,213,015.81; Y= 408,640.00. Project Description: The applicant proposes to directionally drill 1-3 wells from a surface location in GA, Block 278-L which is located in the Freeport Anchorage Area. The purpose of the project is to produce natural gas and/or condensate from an offset lease (MF106182). A typical jack-up rig would be utilized and if producible a 4-pile production platform would be installed. CCC Project No.: 06-0264-F1; Type of Application: U.S.A.C.E. permit application #24166 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: MCX Gulf of Mexico; Location: The project is located in the Gulf of Mexico, OCS Federal Waters, in Mustang Island Area (MU) Blocks 726, 742, and 754, located within the Aransas Pass Anchorage Area and the Aransas Pass Safety Fairway. The project can be located using the following State Plane XY Coordinates in NAD 27, Texas South Zone in U.S. Survey Feet: Proposed Pipeline begins at Well No.1 (DA Permit 23410) at X=2,555,773.24'; Y=782,632.28' Enters Safety Fairway at X=2,556,410.91'; Y=779,256.62' Exits Safety Fairway at X=2,558,851.16'; Y=766,338.66' Ties-into CBL Capital Corporation's 12-inch pipeline at X=2,559,897.99'; Y=760,797.03'. Project Description: The applicant proposes to install, maintain and operate a 6-inch oil pipeline to transport production from MCX Gulf of Mexico, LLC's Mustang Island Block 726A platform to a subsea tie-in point on CBL Capital Corporation's 12-inch pipeline (Segment No. 9026). The water depth of the route varies from 70-feet to 84-feet. The pipeline would be buried a minimum of 10 feet deep in the fairway and a minimum depth of 16.5 feet deep in the anchorage. CCC Project No.: 06-0265-F1; Type of Application: U.S.A.C.E. permit application #24176 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200602437

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

Coastal Coordination Council

Filed: May 2, 2006

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period April 2006, as required by Tax Code, §202.058, is \$58.42 per barrel for the three-month period beginning on January 1, 2006, and ending March 31, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of April 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period April 2006, as required by Tax Code, §201.059, is \$6.78 per mcf for the three-month period beginning on January 1, 2006, and ending March 31, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O. Box 13528, Austin, Texas 78711-3528.

TRD-200602371
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: April 28, 2006



Notice of Contract Award

Pursuant to Chapters 403, 2156, and 2305, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the award for energy education outreach services for the Schools and Local Government Program. The Notice of Request for Proposals was published in the February 3, 2006, issue of *Texas Register* (31 TexReg 733) (RFP 175g).

The contract was awarded to the University of Texas at El Paso, 500 W. University, El Paso, Texas 79968. The total amount of this contract is not to exceed \$145,026.00. The term of the contract is April 24, 2006 to August 31, 2006.

TRD-200602369
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 27, 2006



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/08/06 - 05/14/06 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/08/06 - 05/14/06 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200602426
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 2, 2006



Texas Education Agency

Request for Personal Financial Literacy Materials - High School Level for the 2006 - 2007 School Year

Description. The Texas Education Agency (TEA) is notifying organizations of a second opportunity to submit for review personal financial literacy materials for use in high school economics courses. The original notice was published in the *Texas Register* on March 3, 2006 (31 TexReg 1499). Organizations who submitted materials under the March 2006 notice do not need to resubmit. Approved materials will be added to the *List of Approved Personal Financial Literacy Materials* for use by schools beginning with the 2006 - 2007 school year. Texas Education Code (TEC), §28.002, authorizes the State Board of Educa-

tion to approve materials for use in courses meeting a requirement for an economics credit under TEC, §28.025.

Program Requirements. Materials submitted for review may include any of the following areas of instruction: understanding interest; avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; the types of bank accounts available to consumers and the benefits of maintaining a bank account; balancing a checkbook; the types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and/or charitable giving.

Selection Criteria. Organizations will be responsible for submitting materials that they wish to be reviewed for consideration for inclusion on the *List of Approved Personal Financial Literacy Materials*. All materials submitted for review must satisfy at least one of the areas of instruction in the preceding list and must be submitted with a verification of the extent to which the areas are covered in the materials. The verification form may be downloaded from the TEA website at <http://www.tea.state.tx.us/curriculum/social/verify.doc>.

Materials must be submitted to Michelle Ungurait, Director, Social Studies, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Monday, June 12, 2006, to be considered for inclusion on the *List of Approved Personal Financial Literacy Materials*.

TRD-200602452
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 3, 2006



Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding W. Silver, Inc., Docket No. 2004-0031-AIR-E on April 18, 2006 assessing \$4,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Wilson dba Wilson's Sand Pit, Docket No. 2004-0960-AIR-E on April 18, 2006 assessing \$55,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Metro Brick Company dba Metro Brick and Stone, Docket No. 2004-1063-WQ-E on April 18, 2006 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sarn Management, Inc. dba Toor Food Mart, Docket No. 2004-1328-PST-E on April 18, 2006 assessing \$1,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ernest Muntz dba Two Pines Mobile Home Park and Mary Muntz dba Two Pines Mobile Home Park, Docket No. 2004-1470-PWS-E on April 18, 2006 assessing \$10,413 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammad Arif dba Super Stop 4, Docket No. 2005-0078-PST-E on April 18, 2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Derek Wasson dba Corner Mart Grocery & Station, Docket No. 2005-0085-PST-E on April 18, 2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brady, Docket No. 2005-0099-MSW-E on April 18, 2006 assessing \$12,947 in administrative penalties with \$2,589 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Noorie Traders, Inc. dba Humble Food Store, Docket No. 2005-0307-PST-E on April 18, 2006 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tashi Enterprise, Inc. dba Star Jet Truck Stop, Docket No. 2005-0334-PST-E on April 18, 2006 assessing \$4,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jose Luis Munoz, Docket No. 2005-0420-LII-E on April 18, 2006 assessing \$263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cayuga Independent School District Public Facility Corporation, Docket No. 2005-0535-MWD-E on April 18, 2006 assessing \$10,250 in administrative penalties with \$2,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Angelo, Docket No. 2005-0653-MSW-E on April 18, 2006 assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jimmie C. Chambers, Docket No. 2005-0715-MSW-E on April 18, 2006 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wal-Mart Stores, Inc., Docket No. 2005-0775-IWD-E on April 18, 2006 assessing \$18,760 in administrative penalties with \$3,752 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crandall, Docket No. 2005-0837-MWD-E on April 18, 2006 assessing \$2,982 in administrative penalties with \$596 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murphy Oil USA, Inc. dba Murphy USA 7126, Docket No. 2005-0892-PST-E on April 18, 2006 assessing \$12,150 in administrative penalties with \$2,430 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-0993-AIR-E on April 18, 2006 assessing \$28,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunray Mini Mart #2, Inc. dba Otal All Seasons Food Store, Docket No. 2005-1048-PST-E on April 18, 2006 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-

2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veterans of Foreign Wars of the United States Post 8953, Docket No. 2005-1058-PWS-E on April 18, 2006 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Davis, Staff Attorney at (512) 239-5487, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hudspeth County Water Control and Improvement District No. 1, Docket No. 2005-1097-MWD-E on April 18, 2006 assessing \$10,080 in administrative penalties with \$2,016 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William K. Ingram, Docket No. 2005-1143-OSI-E on April 18, 2006 assessing \$188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Breckenridge, Docket No. 2005-1171-PWS-E on April 18, 2006 assessing \$665 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Pipeline, Ltd., Docket No. 2005-1304-AIR-E on April 18, 2006 assessing \$6,222 in administrative penalties with \$1,244 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Invista S.A.R.L., Docket No. 2005-1309-AIR-E on April 18, 2006 assessing \$2,340 in administrative penalties with \$468 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas Oil Service, Inc., Docket No. 2005-1312-MSW-E on April 18, 2006 assessing \$525 in administrative penalties with \$105 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Precision Painting Inc., Docket No. 2005-1332-AIR-E on April 18, 2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A&F Brothers, Inc. dba Super Stop 19, Docket No. 2005-1379-PST-E on April 18, 2006 assessing \$14,520 in administrative penalties with \$2,904 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hernan F. Maya, Docket No. 2005-1387-LII-E on April 18, 2006 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rubina, Incorporated, Docket No. 2005-1389-PST-E on April 18, 2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Wells County, Docket No. 2005-1398-MLM-E on April 18, 2006 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sherwin Alumina, L.P., Docket No. 2005-1446-AIR-E on April 18, 2006 assessing \$4,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wichita Falls, Docket No. 2005-1507-PWS-E on April 18, 2006 assessing \$10,296 in administrative penalties with \$2,059 deferred.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wallace Allen Raynor dba Sun Acres Mobile Home Park, Docket No. 2005-1530-PWS-E on April 18, 2006 assessing \$318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Energy Distributors, Inc., Docket No. 2005-1555-IWD-E on April 18, 2006 assessing \$4,800 in administrative penalties with \$960 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill Briscoe Enterprises, Inc., Docket No. 2005-1611-MSW-E on April 18, 2006 assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sparenberg Gin, Inc., Docket No. 2005-1616-MLM-E on April 18, 2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pearsall, Docket No. 2005-1633-MLM-E on April 18, 2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-1638-AIR-E on April 18, 2006 assessing \$24,786 in administrative penalties with \$4,957 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Round Rock, Docket No. 2005-1655-EAQ-E on April 18, 2006 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peggy Tiemann dba Phillipsburg Mobile Home Park, Docket No. 2005-1693-PWS-E on April 18, 2006 assessing \$2,650 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator at (512) 239-0824, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rolling Creek Utility District, Docket No. 2005-1710-MWD-E on April 18, 2006 assessing \$2,040 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Champion Technologies, Inc. dba Champion Technologies Fresno, Docket No. 2005-1727-IHW-E on April 18, 2006 assessing \$50,740 in administrative penalties with \$10,148 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rohm and Haas Company, Docket No. 2005-1745-AIR-E on April 18, 2006 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gregory Power Partners, L.P., Docket No. 2005-1746-AIR-E on April 18, 2006 assessing \$2,700 in administrative penalties with \$540 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Carr dba A K Convenience Store, Docket No. 2005-1772-PST-E on April 18, 2006 assessing \$9,500 in administrative penalties with \$1,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bigford, Inc. dba Fiesta Marina, Docket No. 2005-1778-PWS-E on April 18, 2006 assessing \$3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda King-Zrubek, Enforcement Coordinator at (512) 239-0824, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lytle, Docket No. 2005-1800-MWD-E on April 18, 2006 assessing \$9,480 in administrative penalties with \$1,896 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2005-1808-AIR-E on April 18, 2006 assessing \$6,630 in administrative penalties with \$1,326 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Corporation dba ExxonMobil Chemical Company, Docket No. 2005-1811-MLM-E on April 18, 2006 assessing \$32,600 in administrative penalties with \$6,520 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wend-XX, Inc. dba Exxon Superstation, Docket No. 2005-1813-PST-E on April 18, 2006 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512)239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Melvin Jerry Threadgill dba M&T Natural Stone, Docket No. 2005-1814-WQ-E on April 18, 2006 assessing \$3,300 in administrative penalties with \$660 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Plains Pipeline, L.P., Docket No. 2005-1822-AIR-E on April 18, 2006 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Border Steel, Inc., Docket No. 2005-1828-AIR-E on April 18, 2006 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grant H. Gilson, Docket No. 2005-1838-OSI-E on April 18, 2006 assessing \$203 in administrative penalties with \$41 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2005-1843-IHW-E on April 18, 2006 assessing \$8,100 in administrative penalties with \$1,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nocona, Docket No. 2005-1857-MWD-E on April 18, 2006 assessing \$7,080 in administrative penalties with \$1,416 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nsbr, Inc. dba Kellys Food Store 2, Docket No. 2005-1867-PST-E on April 18, 2006 assessing \$11,252 in administrative penalties with \$2,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bianca Enterprises, Inc. dba Kwik Pik Food Mart, Docket No. 2005-1875-PST-E on April 18, 2006 assessing \$3,744 in administrative penalties with \$749 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Crude Gathering, Inc. dba National Oil Recovery, Docket No. 2005-1907-AIR-E on April 18, 2006 assessing \$2,875 in administrative penalties with \$575 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ecolab Inc., Docket No. 2005-1926-IHW-E on April 18, 2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shannon Medical Center, Docket No. 2005-1939-PST-E on April 18, 2006 assessing \$8,740 in administrative penalties with \$1,748 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Junction, Docket No. 2005-1961-PWS-E on April 18, 2006 assessing \$695 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Coleman dba Hidden Valley, Docket No. 2005-1991-PWS-E on April 18, 2006 assessing \$318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rochester, Docket No. 2005-2001-PWS-E on April 18, 2006 assessing \$318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hubert-Watson Subdivision Water Supply, Inc., Docket No. 2005-2051-PWS-E on April 18, 2006 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andres Payan dba Payans Tourist Service, Docket No. 2005-2058-AIR-E on April 18, 2006 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 751-0335, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Rusk County Water Supply Corporation, Docket No. 2005-2071-PWS-E on April 18, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at (361) 825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gill Water Supply Corporation, Docket No. 2005-1980-PWS-E on April 18, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Nelson Collazo, Docket No. 2004-0490-PST-E on May 1, 2006 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200602447

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2006



Notice of a Public Hearing on Proposed Revisions to Chapter 116 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed amendment to §116.603 of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs). This proposal includes the amendment of §116.603 to the EPA as a revision to the SIP.

The proposed rulemaking would amend Chapter 116 to require newspaper notice of proposed standard permits with statewide applicability in Austin, Dallas, Houston, and any other regional newspapers designated by the executive director on a case-by-case basis. Also, the executive director would use press releases and notify select state and local officials by electronic means for public notice of standard permits.

A public hearing for the proposed rulemaking and SIP revision will be held in Austin on June 12, 2006, at 10:00 a.m., in Building B, Room 201A, at the commission's central office, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons with special needs who have special communication or other accommodation needs who are planning to attend the hearing should contact Patricia Durón, Office of Legal Services, at (512) 239-6087. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-038-116-PR. Comments must be received by 5:00 p.m., June 14, 2006. Copies of the proposed rule can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adapt.html. For further information, please contact Phil Harwell, Air Permits Division, at (512) 239-1517.

TRD-200602353

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: April 27, 2006



Notice of Executive Director's Response to Public Comments on General Permit Number TXG920000

The executive director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG920000. As required by Texas Water Code (TWC), §26.040(d) and 30 TAC §205.3(e), before a general permit is approved, the executive director prepares a response to all timely comments. The response must be made available to the public and filed with the TCEQ's Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This Response addresses all timely received comments, whether or not withdrawn.

The Office of the Chief Clerk timely received comment letters from the following: Northwest Comal County Environmental Coalition (NCCEC), Texas Cattle Feeders Association (TCFA), Texas Poultry Federation (TPF), Charles Stephens, and Freeman W. Suttles.

BACKGROUND

Permit Description

The commission proposes to amend the Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920000 to allow dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply the ability to qualify for and obtain coverage under this general permit. This general permit authorizes the discharge of manure, litter, and wastewater under limited specific circumstances from CAFOs into and adjacent to water in the state. This general permit is applicable to TPDES CAFOs statewide and state-only CAFOs, including certain CAFOs in the dairy outreach program area (DOPA). Certain CAFOs are not eligible for coverage under this general permit.

This amendment implements Senate Bill (SB) 1707, 79th Legislature, 2005, which changed the permitting requirements under Texas Water Code (TWC), Chapter 26, for certain CAFOs located in the protection zone of a sole-source surface drinking water supply. Prior to SB 1707, any CAFO where any part of the production area of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply must obtain an individual permit. SB 1707 revised TWC, §26.0286, by removing the requirement for poultry CAFOs that do not use a liquid waste handling system (dry litter poultry) located in the protection zone of a sole-source sur-

face drinking water supply to obtain an individual permit. This allows these facilities the ability to apply for coverage under a general permit.

Authorization under this general permit complies with the TPDES requirements in accordance with the Memorandum of Agreement between the United States Environmental Protection Agency (EPA) and TCEQ, dated September 14, 1998, for the delegation of the National Pollutant Discharge Elimination System (NPDES) program.

Procedural Background

Notice of availability was published in the *Houston Chronicle*, *Amarillo Globe News*, and *Nacogdoches Daily Sentinel* on February 7, 2006, and in the *Texas Register* on February 10, 2006. The comment period ended on March 13, 2006.

COMMENTS AND RESPONSES

COMMENT 1

Mr. Suttles is generally opposed to CAFOs in his area, Lake Forest Falls, Montgomery County, Texas.

RESPONSE 1

Texas Water Code, §26.003, states that it is the policy of the state to maintain the quality of water to protect public health and the environment. This general permit meets the Clean Water Act and the Texas Water Code requirements to protect water quality. The general permit requires that manure, litter, and wastewater be retained and used in an appropriate and beneficial manner. The general permit requires that wastewater be contained in retention control structures (RCSs) properly designed, constructed, operated, and maintained. No discharges are authorized under the proposed permit except where rainfall events, either chronic or catastrophic, or catastrophic conditions, cause an overflow from an RCS properly designed, constructed, and maintained.

The general permit requires manure, litter, and wastewater to be applied at agronomic rates in accordance with a nutrient management plan. The agronomic rate is the amount of nutrients that the planned crop can utilize within the growing season. The CAFO operator must maintain information on the cover crops planted and harvested and the application rate for each field in the Pollution Prevention Plan (PPP). As the crops are removed by harvesting or grazing, the nutrients are removed from the soil. This cycle of nutrient application, usage, and removal allows the land to be used for land application of manure, litter, and wastewater on a continuous basis. In the event that soil analyses indicate high phosphorus levels, the CAFO operator would have to develop a nutrient utilization plan based upon crop removal. The general permit defines crop removal as "The amount of nutrients contained in and removed by harvest of the proposed crop." This generally results in a reduced application rate.

The general permit also requires operating CAFOs in such a manner to prevent the creation of a nuisance condition. The general permit does not limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of his property. TCEQ implements and enforces standards established to protect human health, safety, and the environment. Non-compliance with the general permit or TCEQ's rules may result in enforcement action against the CAFO operator. The public is encouraged to report possible issues of noncompliance by contacting the TCEQ Environmental Violations Hotline at (888) 777-3186.

COMMENT 2

Mr. Stephens and NCCEC are concerned about groundwater contamination in Comal County. They suggested that a groundwater impact

study be conducted to determine if the water bearing strata would be affected by agricultural waste.

RESPONSE 2

The permit requires a recharge feature certification and plan to address recharge features documented in the PPP. The general permit defines recharge features as "Those natural or artificial features either on or beneath the ground surface at the site under evaluation that provide or create a significant hydrologic connection between the ground surface and the underlying groundwater within an aquifer. Significant artificial features include, but are not limited to, wells and excavations or material pits. Significant natural hydrologic connections include, but are not limited to, faults; fractures; sinkholes or other macro pores that allows direct surface infiltration; a permeable or a shallow soil material that overlies an aquifer; exposed geologic formations that are identified as an aquifer; or a water course bisecting an aquifer." These features, if present, must be buffered for their protection. Water courses, water bodies, and irrigation wells must have a 100-foot buffer, private drinking water wells must have a 150-foot buffer, and public water wells must have a 500-foot buffer.

Seepage of contaminants into groundwater is minimized in the pen area by maintaining slopes and surface compaction that limits infiltration into the soil and groundwater and directs wastewater runoff into an RCS. Seepage is minimized in the RCSs through the use of clay liners. The general permit requires that the liners be constructed to have hydraulic conductivity no greater than 1×10^{-7} centimeters per second, with a thickness of 1.5 feet or greater or its equivalency in other materials. These liner requirements are the same design specifications as found in Appendix 10d of the Agricultural Waste Management Handbook published by the National Resource Conservation Service (NRCS). Prior to using an RCS, a liner certification must be prepared by a licensed Texas professional engineer or a licensed Texas professional geoscientist documenting compliance with design standards and seepage standards.

See Response 1 related to land application of manure, litter, and wastewater at agronomic rates.

COMMENT 3

TCFA and TPF comment that EPA recently extended the deadline for all permitted CAFOs to develop and implement a Nutrient Management Plan (NMP) from December 31, 2006 to July 31, 2007. The TCEQ recently proposed amendments to 30 TAC Chapter 321, Subchapter B, which also extend this deadline. They recommend amending Part III.A.11(a) of the general permit to remove the reference to the December 31, 2006, date and insert "... on or before the deadline for development and implementation of a NMP adopted by the TCEQ in 30 TAC 321, Subchapter B."

RESPONSE 3

TCEQ agrees that the general permit deadline for development and implementation of an NMP should be consistent with EPA regulations and 30 TAC Chapter 321, Subchapter B. On February 10, 2006, EPA adopted a change in the federal rules extending the date that a CAFO must develop an NMP to July 31, 2007 (see 71 FR 6978). TCEQ published in the *Texas Register*, a proposal to change the date existing CAFOs must develop and implement an NMP from December 31, 2006 to July 31, 2007 in order to remain consistent with the federal regulations (see 31 TexReg 1187). In response to the comment, Part III.A.11(a) of the general permit was revised to read: "A permittee that is a Large CAFO must develop and implement a NMP certified in accordance with the Natural Resources Conservation Service Practice Standard Code 590 on or before the deadline specified in 30 TAC § 321.36(d)(1)."

Changes to the draft permit have been made in response to comments, as noted.

TRD-200602431

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: May 2, 2006



Notice of Water Quality Applications

The following notices were issued during the period of April 27, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.**

CHEVRON PHILLIPS CHEMICAL COMPANY LP which operates the Orange Plant, a polyethylene manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0000359000 to increase the daily maximum effluent limitation for total suspended solids at Outfall 001 and reduce the monitoring frequencies for total copper, oil & grease, biochemical oxygen demand (5-day), and chemical oxygen demand at Outfall 001. The current permit authorizes the discharge of process wastewater, utility wastewater, storm water, and domestic wastewater at a daily average flow not to exceed 3,150,000 gallons per day via Outfall 001. The facility is located on the south side of Farm-to-Market Road 1006, approximately 1.7 miles east of the intersection of Farm-to-Market Road 1006 and State Highway 87, southwest of the City of Orange, Orange County, Texas.

EAGLE'S WINGS RETREAT CENTER, INC. has applied for a new permit, Proposed Permit No. WQ0014622001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 5,900 gallons per day via public access subsurface drip irrigation system with a minimum area of 59,200 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located 0.25 mile east of Ranch-to-Market Road 2341, 2.5 miles north of the intersection of State Highway 29 and Ranch-to-Market Road 2341 in Burnet County, Texas.

CITY OF HEREFORD has applied for a renewal of Permit No. 10186-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 2.5 million gallons per day via surface irrigation of 583 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located in the southwest corner of the city's farm, which is approximately 2 miles northeast of the intersection of U.S. Highway 60 and Farm-to-Market Road 2943 and 0.5 miles east of the intersection of U.S. Highway 60 and County Road 8 in Deaf Smith County, Texas.

JASON ANDREW THOMPSON has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014684001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 26,000 gallons per day. The facility is located 760 feet north then 1330 feet west from the intersection of Shady Lane and Farm-to-Market Highway 2978 in Montgomery County, Texas.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, **WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.**

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the permit issued to LONE STAR GROWERS, L.P. which operates a greenhouse/nursery, to authorize the addition of effluent limitations for beta endosulphan and endosulphan sulfate at Outfall 001. The existing permit authorizes the discharge of process water from greenhouse/nursery operations and boiler blow-down at a daily average flow not to exceed 95,000 gallons per day via Outfall 001. The facility is located at 16 Wire Road, approximately 1.2 miles southeast of the intersection of U.S. Highway 75 and Farm-to-Market Road 1696, and approximately five miles northwest of the City of Huntsville, Walker County, Texas.

TRD-200602446

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2006



Proposed Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 12, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 12, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2006-0068-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102536307; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 1176/PSD-TX-782, and THSC, §382.085(b), by failing to prevent unauthorized emissions of propylene and nitrogen; and 30 TAC §335.323 and the Code, §5.702, by failing to pay hazardous and nonhazardous waste generation fees and associated late fees; PENALTY: \$3,280; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Celanese Limited; DOCKET NUMBER: 2006-0006-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 22872, and THSC, §382.085(b), by failing to prevent unauthorized emissions of sulfur dioxide; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chevron Phillips Chemical Company L.P.; DOCKET NUMBER: 2006-0023-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit notification of an emission event; and 30 TAC §106.4, §116.115(b)(2)(F) and (c), Air Permit Number 21101, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: \$13,680; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: City of Cotulla; DOCKET NUMBER: 2005-1874-MWD-E; IDENTIFIER: RN101920148; LOCATION: Cotulla, La Salle County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), (5), and (9), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10153001, and the Code, §26.121(a), by failing to submit a non-compliance notification report for all sanitary sewer overflow (SSO) events, by failing to employ a certified operator, and by failing to operate and maintain the collection system to prevent unauthorized SSOs; PENALTY: \$11,900; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2006-0131-AIR-E; IDENTIFIER: RN100210517; LOCATION: Sunray, Moore County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Numbers 9708 and PSD-TX-861M2, and THSC, §382.085(b), by failing to prevent unauthorized emissions for sulphur dioxide and hydrogen sulphide; PENALTY: \$4,660; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-0057-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and §122.143(4), Federal Operating Permit Number 2042, and THSC, §382.085(b), by failing to properly report the discovery of an emissions event; 30 TAC §101.20(3) and §116.115(b)(2)(F), Air Permit Numbers 19566/PSD-TX-768M1 and PSD-TX-932, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,490; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Farmers Transport, Inc. dba Enchanted Harbor Utility; DOCKET NUMBER: 2005-1922-PWS-E; IDENTIFIER: RN101442556; LOCATION: El Campo, Wharton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by allegedly exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: \$318; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: G S I II; DOCKET NUMBER: 2006-0029-AIR-E; IDENTIFIER: RN104707633; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: abrasive cleaning and painting; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or meet the requirements of a permit by rule for a spray coat painting and abrasive blasting operation; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Katy-Hockley Corporation; DOCKET NUMBER: 2006-0222-MWD-E; IDENTIFIER: RN101525319; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14109001, and the Code, §26.121(a), by failing to comply with permit effluent limits for total suspended solids (TSS), ammonia-nitrogen, and five-day carbonaceous biochemical oxygen demand; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: City of Kosse; DOCKET NUMBER: 2004-2115-MWD-E; IDENTIFIER: TPDES Permit Number 11405001, RN101919702; LOCATION: Kosse, Limestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11405001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand, pH, and TSS; PENALTY: \$6,308; ENFORCEMENT COORDINATOR: Joseph Daley, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Overton; DOCKET NUMBER: 2006-0089-PWS-E; IDENTIFIER: RN103934733; LOCATION: Overton, Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$318; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Pavestone Company, L.P.; DOCKET NUMBER: 2006-0042-MLM-E; IDENTIFIER: RN101054633; LOCATION: Katy, Waller County, Texas; TYPE OF FACILITY: concrete products manufacturing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Multi-Sector General Permit (MSGP) Number TXR05P359, and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to conduct annual comprehensive site compliance evaluations, by failing to conduct quarterly benchmark monitoring for TSS and iron, by failing to conduct hazardous metals monitoring annually, by failing to maintain a storm water pollution prevention plan on site and available for review, and by failing to clearly label all waste drums located near the maintenance shop; and 30 TAC §335.4, by failing to prevent the discharge and accumulation of oil on the road and overflows of hydraulic and mold release fluids from the secondary containment area near the maintenance shop; PENALTY: \$15,120; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Saf-T-Box Incorporated; DOCKET NUMBER: 2006-0073-AIR-E; IDENTIFIER: RN104207733; LOCATION: White Settlement, Tarrant County, Texas; TYPE OF FACILITY: portable storage and office building manufacturing; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to construction and operation of an outdoor sandblasting facility; PENALTY: \$4,200;

ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: John Dudley Batla dba Texana Vacuum; DOCKET NUMBER: 2006-0033-MLM-E; IDENTIFIER: RN103155412; LOCATION: Columbus, Colorado County, Texas; TYPE OF FACILITY: sludge transporter company; RULE VIOLATED: 30 TAC §330.5(c), by failing to prevent the unauthorized discharge of municipal solid waste; 30 TAC §312.147(b), by temporarily storing waste at a fixed or permanent site without authorization; 30 TAC §312.144(a)(1), (2), and (4), and (f), by failing to prominently mark the pump truck used in transportation of wastes with the company name, telephone number, assigned registration number on both sides, and tank discharge valves; and 30 TAC §312.145(b)(1)(A) and (E) and (2), by failing to maintain a record of each individual collection and deposit of waste transported with the use of five-part trip tickets; PENALTY: \$5,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2005-1949-AIR-E; IDENTIFIER: RN100909373; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5264, and THSC, §382.085(b), by failing to prevent unauthorized emissions of chlorodifluoromethane; PENALTY: \$2,980; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of Troy; DOCKET NUMBER: 2005-2094-MWD-E; IDENTIFIER: RN102844321; LOCATION: Troy, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and (5), 317.4(a)(8) and (b)(4), and 317.7(e), TPDES Permit Number WQ0011263001, and the Code, §26.121(a), by failing to prevent the discharge of waste, by failing to ensure that all systems of collection, treatment, and disposal are properly operated and maintained, by failing to equip all wash down hoses using potable water with an atmospheric vacuum breaker, by failing to prevent an unauthorized discharge of sludge, by failing to prevent the discharge of waste in violation of a permit issued by the commission, and by failing to comply with permitted effluent limitations; PENALTY: \$63,600; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Larry West dba West Dairy Farm; DOCKET NUMBER: 2006-0174-AGR-E; IDENTIFIER: RN104348537; LOCATION: Collinsville, Grayson County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.47(c)(1), by failing to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality; 30 TAC §321.47(e)(6) and (i), by failing to install and maintain a permanent pond marker in the retention control structure and by failing to maintain on site all required records; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Wildwood Circle Property Owners Association, Inc.; DOCKET NUMBER: 2006-0183-PWS-E; IDENTIFIER: RN101191328; LOCATION: Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A) and (f)(3)(B)(iii), and THSC, §341.033(a), by failing to employ an operator with a class D or higher license, by failing to retain monitoring records for at least three years; 30 TAC §290.110(d)(3)(C)(ii), by failing to measure the free chlorine

residual within the distribution system with a colorimeter, spectrophotometer, or color comparator test kit; 30 TAC §290.42(e)(3)(A) and §290.46(d)(2)(A), and THSC, §341.0315(c), by failing to have disinfectant equipment with a capacity of at least 50% or greater than the highest expected dosage and failing to maintain a free chlorine residual of 0.2 milligrams per liter; and 30 TAC §290.45(b)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 50 gallons per connection; PENALTY: \$920; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200602432

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: May 2, 2006



Proposal for Decision (Gas Mart)

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 27, 2006 in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mohammed N. Qureshi dba HAH Gas Mart; SOAH Docket No. 582-06-1639; TCEQ Docket No. 2002-0970-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mohammed N. Qureshi dba HAH Gas Mart on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200602449

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 3, 2006



Proposal for Decision (Garcia)

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 27, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v Jose Garcia dba Neighborhood Trucks & Auto Repair; SOAH Docket No. 582-06-1446; TCEQ Docket No. 2004-1998-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Jose Garcia dba Neighborhood Trucks & Auto Repair on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200602448
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 3, 2006

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General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Chambers County Art. 33.136 Sketch No. 3, submitted by Robert W. Terry, a Registered Professional Land Surveyor, conducted in March, 2005, locating the following shoreline boundary:

A plat showing a survey made by Gary C. Bowes, Licensed State Land Surveyor on July 21, 2005, of a portion of the MHHW line of Cedar Bayou adjacent to the John Steele Survey A-227 and the John Ijams Survey A-151.5.

For a copy of this survey contact Archives & Records, Texas General Land Office at (512) 463-5277.

TRD-200602436
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: May 2, 2006

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed payment rates for case management services for the Children's Vocational Discovery and Development Program. This program is operated by the Texas Department of Assistive and Rehabilitative Services (DARS). The effective date of the proposed payment rates is June 1, 2006. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs.

The public hearing will be held on May 26, 2006, at 9:00 a.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Joyce Felix, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to joyce.felix@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Felix, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Felix at (512) 491-1998.

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Felix at (512) 491-1174 or at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Felix by May 18, 2006, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology for Purchased Health Services at 1 TAC Chapter 355, Subchapter J, §355.8381 (relating to Case Management Reimbursement Methodology).

TRD-200602444
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: May 2, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Parkwest Apartment Homes) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Elsie High School, 12601 High Star, Houston, Harris County, Texas 77072, at 6:00 p.m. on May 31, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Houston 3601 Parkwest Apartments, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development located at approximately the 14601 block of Parkwest Central Drive and west of the 3600 block of State Highway 6, Harris County, Texas. A physical address has not been assigned by the City of Houston. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P. O. Box 13941 Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602438

William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: May 2, 2006

Texas Department of Insurance

Company Licensing

Application to change the name of PHOENIX NATIONAL INSURANCE COMPANY to MOLINA HEALTHCARE INSURANCE COMPANY, a foreign life, accident, and/or health company. The home office is in Columbus, Ohio.

Application to change the name of AMERICAN INDEMNITY COMPANY to CATLIN INSURANCE COMPANY, INC., a domestic fire and/or casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200602473
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 3, 2006

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C-H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

UnitedHealthcare Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division--Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of UnitedHealthcare Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200602363
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 27, 2006

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code, §1501.312. A small employer health benefit plan issuer is defined by Insurance Code, §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code, §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

UnitedHealthcare of Texas, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of UnitedHealthcare of Texas, Inc. to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200602364
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: April 27, 2006

Notice of Reconvening of 2004 Texas Title Insurance Biennial Hearing - Ratemaking Phase

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2601 on Wednesday, August 16, 2006, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, and continuing thereafter at dates, times, and places designated by the Commissioner until conclusion. This is notice of the reconvening of the continued Ratemaking Phase of the 2004 Texas Title Insurance Biennial Hearing that was originally set on December 31, 2004, as published in the October 15, 2004, issue of the *Texas Register* (29 TexReg 9718).

The Commissioner of Insurance has jurisdiction over the promulgation of rules and premium rates, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, §31.021 and Chapters 2501 and 2703 and §2551.003, and pursuant to the Texas Administrative Code, Title 28, Chapter 9. The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Gov't Code, Ch. 2001).

TRD-200602370

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Texas Lottery Commission

Instant Game Number 671 "Scratch Happy"

1.0 Name and Style of Game.

A. The name of Instant Game No. 671 is "SCRATCH HAPPY". The play style is "match 3 of 6 with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 671 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 671.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$30.00, \$100, \$500, \$1,000 and HAPPY PLAY SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 671 - 1.2D

| PLAY SYMBOL | CAPTION |
|-------------|----------|
| \$1.00 | ONE\$ |
| \$2.00 | TWO\$ |
| \$3.00 | THREE\$ |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWENTY |
| \$30.00 | THIRTY |
| \$100 | ONE HUN |
| \$500 | FIV HUN |
| \$1,000 | ONE THOU |
| HAPPY | DOUBLE |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 671 - 1.2E

| CODE | PRIZE |
|------|---------|
| ONE | \$1.00 |
| TWO | \$2.00 |
| THR | \$3.00 |
| FOR | \$4.00 |
| FIV | \$5.00 |
| SIX | \$6.00 |
| TEN | \$10.00 |
| TWN | \$20.00 |

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (671), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 671-0000001-001.

L. Pack - A pack of "SCRATCH HAPPY" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 005 to 009 on the next page etc.; and tickets 246 to 250 will be on the last page. Tickets 001 and 250 will be folded down to expose the pack-ticket number through the shrink-wrap. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SCRATCH HAPPY" Instant Game No. 671 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SCRATCH HAPPY" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching dollar amounts in the play area, the player wins that dollar amount. If a player reveals 2 matching dollar amounts and a HAPPY play symbol in the play area, the player wins DOUBLE the dollar amount instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win only one (1) time on a ticket.

C. No ticket will contain a HAPPY symbol and more than two (2) like prize amounts.

D. As many as three (3) pairs of like play symbols may appear on a ticket which does not contain a HAPPY symbol.

E. No more than one (1) HAPPY symbol will appear on a ticket.

F. No ticket will contain more than three (3) like prize amounts.

G. Non-winning tickets will not contain more than two like prize amounts

H. A pair of prize amounts and the HAPPY symbol will win 2 times the prize amount shown and will win as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SCRATCH HAPPY" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SCRATCH HAPPY" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SCRATCH HAPPY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SCRATCH HAPPY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SCRATCH HAPPY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 671. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 671 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---------------------|---------------------------------------|------------------------------------|
| \$1 | 1,008,000 | 11.90 |
| \$2 | 816,000 | 14.71 |
| \$3 | 216,000 | 55.56 |
| \$4 | 264,000 | 45.45 |
| \$5 | 216,000 | 55.56 |
| \$6 | 24,000 | 500.00 |
| \$10 | 24,000 | 500.00 |
| \$20 | 12,000 | 1,000.00 |
| \$30 | 4,750 | 2,526.32 |
| \$60 | 4,250 | 2,823.53 |
| \$100 | 3,500 | 3,428.57 |
| \$200 | 1,500 | 8,000.00 |
| \$1,000 | 100 | 240,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.63. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 671 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 671, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200602394
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: April 28, 2006



Instant Game Number 674 "Poker Royale"

1.0 Name and Style of Game.

A. The name of Instant Game No. 674 is "POKER ROYALE". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 674 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 674.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, 2 DIAMOND

SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL and A HEART SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 674 - 1.2D

| PLAY SYMBOL | CAPTION |
|--------------------|----------------|
| 2 CLUB SYMBOL | 2CLB |
| 3 CLUB SYMBOL | 3CLB |
| 4 CLUB SYMBOL | 4CLB |
| 5 CLUB SYMBOL | 5CLB |
| 6 CLUB SYMBOL | 6CLB |
| 7 CLUB SYMBOL | 7CLB |
| 8 CLUB SYMBOL | 8CLB |
| 9 CLUB SYMBOL | 9CLB |
| 10 CLUB SYMBOL | 10CLB |
| J CLUB SYMBOL | JCLB |
| Q CLUB SYMBOL | QCLB |
| K CLUB SYMBOL | KCLB |
| A CLUB SYMBOL | ACLB |
| 2 DIAMOND SYMBOL | 2DMD |
| 3 DIAMOND SYMBOL | 3DMD |
| 4 DIAMOND SYMBOL | 4DMD |
| 5 DIAMOND SYMBOL | 5DMD |
| 6 DIAMOND SYMBOL | 6DMD |
| 7 DIAMOND SYMBOL | 7DMD |
| 8 DIAMOND SYMBOL | 8DMD |
| 9 DIAMOND SYMBOL | 9DMD |
| 10 DIAMOND SYMBOL | 10DMD |
| J DIAMOND SYMBOL | JDMD |
| Q DIAMOND SYMBOL | QDMD |
| K DIAMOND SYMBOL | KDMD |
| A DIAMOND SYMBOL | ADMD |
| 2 SPADE SYMBOL | 2SPD |
| 3 SPADE SYMBOL | 3SPD |
| 4 SPADE SYMBOL | 4SPD |
| 5 SPADE SYMBOL | 5SPD |
| 6 SPADE SYMBOL | 6SPD |
| 7 SPADE SYMBOL | 7SPD |
| 8 SPADE SYMBOL | 8SPD |
| 9 SPADE SYBOL | 9SPD |
| 10 SPADE SYMBOL | 10SPD |
| J SPADE SYMBOL | JSPD |
| Q SPADE SYMBOL | QSPD |
| K SPADE SYMBOL | KSPD |
| A SPADE SYMBOL | ASPD |
| 2 HEART SYMBOL | 2HRT |
| 3 HEART SYMBOL | 3HRT |
| 4 HEART SYMBOL | 4HRT |
| 5 HEART SYMBOL | 5HRT |
| 6 HEART SYMBOL | 6HRT |
| 7 HEART SYMBOL | 7HRT |
| 8 HEART SYMBOL | 8HRT |

| | |
|-----------------|-------|
| 9 HEART SYMBOL | 9HRT |
| 10 HEART SYMBOL | 10HRT |
| J HEART SYMBOL | JHRT |
| Q HEART SYMBOL | QHRT |
| K HEART SYMBOL | KHRT |
| A HEART SYMBOL | AHRT |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 674 - 1.2E

| CODE | PRIZE |
|------|---------|
| THR | \$3.00 |
| FIV | \$5.00 |
| TEN | \$10.00 |
| FTN | \$15.00 |
| TWN | \$20.00 |

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50, \$75 or \$100.

I. High-Tier Prize - A prize of \$1,000 or \$35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (674), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 674-0000001-001.

L. Pack - A pack of "POKER ROYALE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "POKER ROYALE" Instant Game No. 674 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "POKER ROYALE" Instant Game is determined once the latex on the ticket is scratched off to expose 69 (sixty-nine) Play Symbols. Scratch the DEALT CARDS play symbols are to reveal 30 (thirty) cards. Scratch each card in YOUR HANDS play area that matches any of the DEALT CARDS play symbols. Match all cards in any of YOUR HANDS to the DEALT CARDS play symbols, win the prize shown for that HAND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 69 (sixty-nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 69 (sixty-nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 69 (sixty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 69 (sixty-nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. A ticket can win up to 4 times as indicated by the prize structure.

C. The majority of the tickets will have unique configurations of DEALT CARDS and YOUR HANDS areas.

D. There will be no perceptible play patterns in play data in winning and nonwinning tickets.

E. On winning tickets, the cards not appearing in the DEALT CARDS play area that would complete other non-winning rows across in the YOUR HANDS play area, will vary so that the same card(s) is/are not always missing.

F. On non-winning tickets, the card(s) not appearing in the DEALT CARDS play area that would complete a row across in the YOUR HANDS play area will be varied so that it is not always the same card(s) that is/are missing.

G. The thirty (30) DEALT CARDS will be drawn from one deck of 52 cards, Ace through King in each of the four suits (?, ?, ?, ?).

H. All 52 possible card values will appear randomly over all available positions in the DEALT CARDS play area with respect to other restrictions.

I. On winning or non-winning tickets, all card symbols in the DEALT CARDS play area will be unique (no duplicates). This simulates the use of a single deck of cards.

J. On winning or non-winning tickets, there will never be three (3) or more cards of the same value (i.e. 10 (?), 10(?), 10(?)), adjacent to one another in a vertical, horizontal or diagonal straight line in the DEALT CARDS play area.

K. On winning or non-winning tickets, there will always be at least five (5) cards of each suit appearing in the DEALT CARDS play area and at least one (1) of those cards will appear in each horizontal row in the DEALT CARDS play area.

L. On winning or non-winning tickets, no more than two (2) cards of one suit will appear in a vertical column in the DEALT CARDS play area.

M. In the YOUR HANDS play area, a Card can appear more than once but will not appear more than once in the same hand and will never appear more than two (2) times on a ticket.

N. The YOUR HANDS card symbols will be imaged and therefore will be different from ticket to ticket.

O. The cards in the YOUR HANDS play area will appear in descending order from left to right.

P. The Ace will always be high and will never be used in conjunction with an Ace, 2, 3, 4, 5 straight.

Q. Wrap-around straights are not allowed.

R. A Flush will never contain a Straight.

S. The card combinations in the YOUR HANDS play area will be determined as follows:

Figure 3: GAME NO. 674 - 2.2S

| | |
|--|----------|
| Royal Flush (A, K, Q, J, 10 of the same suit, and will be either ALL clubs or ALL spades) | \$35,000 |
| 4 of a Kind (Four cards of the same rank) | \$1,000 |
| Full House (Any 3 of a Kind + Any Pair) | \$100 |
| Flush (Any 5 cards of the same suit and will be either ALL clubs or ALL spades) and will not be a Royal Flush. | \$75 |
| Straight (Any 5 cards in sequence of different suits.) | \$50 |
| 3 of a Kind (Three cards of the same rank) | \$40 |
| 2 Pair (In a single hand) (must be of greater value than the \$10 level) | \$20 |
| 2 Pair (In a single hand) (must be of lower value than the \$20 level) | \$10 |
| 1 Pair (Two cards of the same rank) (must be of greater value than the \$3 level) | \$5 |
| 1 Pair (Two cards of the same rank) (must be of lower value than the \$5 level) | \$3 |

T. All YOUR HANDS for prize levels \$3 through \$35,000 will include at least one (1) black play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "POKER ROYALE" Instant Game prize of \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$40.00, \$50.00, \$75.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$50.00, \$75.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "POKER ROYALE" Instant Game prize of \$1,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "POKER ROYALE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is

not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "POKER ROYALE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "POKER ROYALE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

Figure 4: GAME NO. 674 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$3 | 624,000 | 9.62 |
| \$5 | 384,000 | 15.63 |
| \$10 | 144,000 | 41.67 |
| \$15 | 96,000 | 62.50 |
| \$20 | 48,000 | 125.00 |
| \$30 | 35,000 | 171.43 |
| \$40 | 24,000 | 250.00 |
| \$50 | 24,000 | 250.00 |
| \$75 | 7,550 | 794.70 |
| \$100 | 2,000 | 3,000.00 |
| \$1,000 | 25 | 240,000.00 |
| \$35,000 | 7 | 857,142.86 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.32. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 674 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 674, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 674. The approximate number and value of prizes in the game are as follows:

to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602475
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 3, 2006



Instant Game Number 727 "Golden Ticket"

1.0 Name and Style of Game.

A. The name of Instant Game No. 727 is "GOLDEN TICKET". The play style is "key number match with doubler."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 727 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 727.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, GOLD BAR SYMBOL, \$3.00, \$6.00, \$10.00, \$15.00, \$30.00, \$50.00, \$100, \$500, \$2,000 and \$35,000.

D. Play Symbol Caption-the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 727 - 1.2D

| PLAY SYMBOL | CAPTION |
|-----------------|----------|
| 01 | ONE |
| 02 | TWO |
| 03 | THR |
| 04 | FOR |
| 05 | FIV |
| 06 | SIX |
| 07 | SVN |
| 08 | EGT |
| 09 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FRN |
| 15 | FTN |
| 16 | SXT |
| 17 | SVT |
| 18 | EGN |
| 19 | NTN |
| 20 | TWY |
| GOLD BAR SYMBOL | DBL |
| \$3.00 | THREE\$ |
| \$6.00 | SIX\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FIFTEEN |
| \$30.00 | THIRTY |
| \$50.00 | FIFTY |
| \$100 | ONE HUN |
| \$500 | FIV HUN |
| \$2,000 | TWO THOU |
| \$35,000 | 35 THOU |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 727 - 1.2E

| CODE | PRIZE |
|-------------|----------------|
| THR | \$3.00 |
| SIX | \$6.00 |
| TEN | \$10.00 |
| FTN | \$15.00 |

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$6.00, \$10.00 or \$15.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$2,000 or \$35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (727), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 727-0000001-001.

L. Pack - A pack of "GOLDEN TICKET" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLDEN TICKET" Instant Game No. 727 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A

prize winner in the "GOLDEN TICKET" Instant Game is determined once the latex on the ticket is scratched off to expose 33 (thirty-three) Play Symbols. If a player matches any of the YOUR NUMBERS play symbols to any of the GOLDEN NUMBERS play symbols, the player wins the prize shown for that play symbol. If a player reveals a GOLD BAR play symbol the player wins DOUBLE the prize shown instantly. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to fifteen (15) times in this game.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. No duplicate Golden Numbers will appear on a ticket.

F. Your Number will never equal the corresponding Prize symbol.

G. A non-winning prize symbol will not appear more than 2 (two) times on a ticket.

H. The "Gold Bar" symbol will never appear on non-winning tickets.

I. The "Gold Bar" symbol will never appear as any of the "GOLDEN NUMBERS".

J. The "Gold Bar" symbol will win double the corresponding prize shown and will win as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLDEN TICKET" Instant Game prize of \$3.00, \$6.00, \$10.00, \$15.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify

the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLDEN TICKET" Instant Game prize of \$2,000 or \$35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLDEN TICKET" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the

"GOLDEN TICKET" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "GOLDEN TICKET" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

Figure 3: GAME NO. 727 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---------------------|---------------------------------------|------------------------------------|
| \$3 | 334,560 | 12.20 |
| \$6 | 514,080 | 7.94 |
| \$10 | 32,640 | 125.00 |
| \$15 | 40,800 | 100.00 |
| \$30 | 23,800 | 171.43 |
| \$50 | 21,250 | 192.00 |
| \$100 | 8,500 | 480.00 |
| \$500 | 204 | 20,000.00 |
| \$2,000 | 30 | 136,000.00 |
| \$35,000 | 4 | 1,020,000.00 |

* The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.18. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 727 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 727, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200602434

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 727. The approximate number and value of prizes in the game are as follows:

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 2, 2006

Texas Public Finance Authority

Texas Public Finance Authority Charter School Finance Corporation Request for Applications Concerning Texas Credit Enhancement Program

Filing Authority. Texas Public Finance Authority Charter School Finance Corporation

Eligible Applicants. The Texas Public Finance Authority Charter School Finance Corporation (CSFC) is requesting applications from eligible entities to receive credit enhancement for eligible Texas open enrollment charter schools by funding a debt service reserve fund for bonds issued by the TPFA's Charter School Finance Corporation (CSFC). Eligible entities are open-enrollment charter schools that: (1) have earned an academic rating of acceptable or higher for two consecutive years, including 2006; (2) are fiscally sound as determined by a satisfactory rating under the 2006 Financial Integrity Rating System of Texas (FIRST) as adapted for charter schools; and (3) meet other criteria as outlined in the application.

TCEP training will be hosted by TPFA, TEA, and Resource Center staff. All potential TCEP applicants are strongly encouraged to attend one of the following training sessions at TEA, Room 1-104, in the William B. Travis Building, 1701 N. Congress, Austin: Monday, May 15, 2006 at 1:30 p.m. and Tuesday, May 23, 2006 at 1:30 p.m.

Description. The Texas Credit Enhancement Program (TCEP) received a \$6.9 million grant from the US Department of Education (USDOE) to establish a credit enhancement program for charter schools facilities funding. TCEP is a consortium formed with the Resource Center for Charter Schools, the Texas Public Finance Authority Charter School Finance Corporation (TPFA CSFC), and the Texas Education Agency (TEA). The TPFA CSFC is a non-profit corporation created by the Board of Directors of the Texas Public Finance Authority (TPFA), a state agency, pursuant to §53.351 of the Texas Education Code. TPFA provides administrative and staff support for the CSFC. The CSFC is the entity responsible for awarding access to TCEP grant funds.

Dates of Project. Applications will be due by September 15, 2006 at 5:00 p.m. into the TPFA office at 300 West 15th Street, Suite 411, Austin, Texas, 78701.

Prior to submitting the application, the charter schools should work with their financial advisors, bond counsel, and an underwriter to structure their bond issue and prepare preliminary bond documents. These services will not be provided by TCEP.

Project Amount. The TCEP will use the \$6.9 million in Credit Enhancement for Charter School Facilities grant funds, combined with a \$100,000 TEA contribution, to establish reserve funds for charter schools that are issuing municipal bonds to finance the acquisition, construction, repair, or renovation of Texas charter school facilities. Refinancing of facilities debt may be included if it falls within federal program guidelines. The debt service reserve funds will be held in the State treasury solely to provide security for repayment of the bonds. The funds will not be provided directly to the approved charter schools for construction.

Selection Criteria. Applications will be reviewed by consortium staff and approved by the CSFC board. Approved charters will be notified in early 2007.

Requesting the Application. Preliminary copies of the TCEP application will be distributed at the training sessions. An electronic version will be available on the TPFA website (www.tpfa.state.tx.us) by approximately May 24, 2006.

Further Information. For additional information contact: Kim Edwards at kim.edwards@tpfa.state.tx.us; Mary Perry at mary.perry@tea.state.tx.us; or Patsy O'Neill at oneillp@texas.net.

TRD-200602362
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: April 27, 2006

◆ ◆ ◆ **Public Utility Commission of Texas**

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 27, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Phonoscope, Ltd. for a State-Issued Certificate of Franchise Authority, Project Number 32654 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the counties of Harris (excluding the City of Houston), Fort Bend, Galveston, Waller, Montgomery, and Brazoria.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32654.

TRD-200602441
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2006

◆ ◆ ◆ **Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On April 26, 2006, Connect I.T. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60691. Applicant intends to reflect a change in its service area to include the entire state of Texas.

The Application: Application of Connect I.T. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32649.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 17, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32649.

TRD-200602428
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2006

◆ ◆ ◆ **Notice of Application for Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 21, 2006, for a service provider certificate of operating authority (SPCOA), pursuant

to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Talk Now Telco for a Service Provider Certificate of Operating Authority, Docket Number 32639 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 17, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32639.

TRD-200602365

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: April 27, 2006



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 25, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of CURRENT Communications of Texas, L.P. for a Service Provider Certificate of Operating Authority, Docket Number 32648 before the Public Utility Commission of Texas.

Applicant intends to provide private line communications.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 17, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32648.

TRD-200602427

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2006



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 26, 2006, for a service provider certificate of operating authority (SPCOA), pursuant

to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Clearwire Telecommunications Services, LLC for a Service Provider Certificate of Operating Authority, Docket Number 32650 before the Public Utility Commission of Texas.

Applicant intends to provide T1-Private Line, and DS1 or higher capacity transport, special access and 911 access.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 17, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32650.

TRD-200602429

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2006



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 27, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Access One Inc. for a Service Provider Certificate of Operating Authority, Docket Number 32652 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 17, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32652.

TRD-200602442

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 2, 2006



Notice of Application to Amend Certificated Service Area Boundaries in Kerr County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on April 24, 2006, for an amendment to certificated service area boundaries within Kerr County, Texas.

Docket Style and Number: Application of Bandera Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for Service Area Boundaries within Kerr County. Docket Number 32642.

The Application: Bandera Electric Cooperative, Inc. (BEC) has been asked to provide electric service to serve a small industrial park, Ranger Park, near Center Point, Texas. A portion of the property is within BEC's territory and a portion of the property is within the boundary for Kerrville Public Utility (KPUB). BEC has existing three phase line in place to serve the industrial park. KPUB is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 22, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32642.

TRD-200602366

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2006



Notice of Application to Amend Certificated Service Area Boundaries in Real County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 27, 2006, for an amendment to certificated service area boundaries within Real County, Texas.

Docket Style and Number: Application of Bandera Electric Cooperative, Inc. for a Certificate of Convenience and Necessity for a Service Area Exception within Real County. Docket Number 32653.

The Application: Bandera Electric Cooperative, Inc. (BEC) seeks to provide service to a specific customer located within the certificated service area of Pedernales Electric Cooperative, Inc. (PEC). PEC is in full agreement with the service area exception. The estimated cost for the construction of approximately 3,200 feet of line is \$11,000.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 19, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32653.

TRD-200602443

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2006



Notice of Request for Eligible Telecommunications Provider for Uncertificated Areas Pursuant to P.U.C. Substantive Rule §26.421

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on April 24, 2006, for telecommunications service in Texas uncertified areas pursuant to P.U.C. Substantive Rule §26.421.

Docket Title and Number: Petition for Telecommunications Service in Texas Uncertified Areas. Docket Number 32645.

The Application: Mark Siegler filed, on behalf of William T. and Barbara B. Armstrong, a petition for telecommunications service in Texas uncertified areas. The Applicant nominated candidates, DialToneServices, L.P. (DTS) and/or CapRock Telephone Cooperative, Inc. to provide telephone service under this petition.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32645.

TRD-200602368

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2006



Notice of Request for Eligible Telecommunications Provider for Uncertificated Areas Pursuant to P.U.C. Substantive Rule §26.421

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) on April 26, 2006, for telecommunications service in Texas uncertified areas pursuant to P.U.C. Substantive Rule §26.421.

Docket Title and Number: Petition for Telecommunications Service in Texas Uncertified Areas. Docket Number 32651.

The Application: Mark Siegler filed on behalf of Jane H. King a petition for telecommunications service in Texas uncertified areas. The Applicant nominated candidate DialToneServices, L.P. (DTS) and/or CapRock Telephone Cooperative, Inc. to provide telephone service under this petition.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32651.

TRD-200602430

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 2, 2006



Texas 9-1-1 Alliance

Notice of Request for Proposals

The Texas 9-1-1 Alliance announces the issuance of a Request for Proposals (RFP) for Validation Data Base (VDB), Emergency Services Zone Routing Data Base (ERDB), and supporting equipment and services associated with the interim architecture for Voice over Internet Protocol (VoIP) Enhanced 9-1-1 (E9-1-1) and migration to Next Generation E9-1-1 services consistent with current and evolving technical and industry standards. The immediate major purpose of the VDB and ERDB is to enable and promote the use of the Master Street Address Guide (MSAG) to obtain wireline E9-1-1 equivalency for non-madic VoIP E9-1-1 calls. While the immediate need for the solutions under the RFP is for Texas 9-1-1 Governmental Entities (9-1-1 Governmental Entities) seeking to accommodate and better prepare for non-madic VoIP callers using the interim architecture for VoIP E9-1-1, the ultimate solutions may also provide for the appropriate transition to Next Generation E9-1-1 services and accommodate a wide variety of calling devices and technologies.

The Texas 9-1-1 Alliance is an interlocal government administrative entity formed under the Texas Interlocal Cooperation Act, and consists of Texas Health and Safety Code Ann., Chapter 772 Emergency Communication Districts that serve approximately fifty (50) percent of the population of the State of Texas. Other 9-1-1 Governmental Entities are Regional Planning Commissions under the jurisdiction of the Commission on State Emergency Communications (CSEC) and grandfathered Home-Rule City Emergency Communication Districts operating a 9-1-1 system prior to a certain statutory date.

The Texas 9-1-1 Alliance reserves the right to accept or reject any or all proposals submitted. All proposals are subject to further negotiations prior to the award of any contract associated with this RFP. The Texas 9-1-1 Alliance and participating 9-1-1 Governmental Entities are under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Texas 9-1-1 Alliance and participating 9-1-1 Governmental Entities to pay for any costs incurred prior to the execution of a contract from an award associated with this RFP.

The relevant RFP dates are as follows:

RFP Release Date: April 28, 2006

Mandatory Pre-Bid Conference Date: May 31, 2006

Written Inquiry Deadline Date: June 6, 2006

RFP Response Deadline Date: July 14, 2006.

The RFP asks for proposals to specify proposed pricing by core functionality and elements, and any alternative business arrangements that they may wish to propose. The RFP also provides for the negotiation of a pre-deployment pilot project, and a performance bond may be required from any successful proposer(s).

A copy of the RFP may be downloaded from the Texas 9-1-1 Alliance website at <http://www.texas911alliance.org/bid.html>. Parties interested in submitting a proposal may obtain any additional information associated with release of the RFP by contacting Richard Muscat at (210) 408-3911 and at the Bexar Metro 9-1-1 Network District, 911 Saddle-tree Court, San Antonio, Texas 78231-1532.

TRD-200602380

Greg Petrey

Secretary

Texas 9-1-1 Alliance

Filed: April 28, 2006



Texas A&M University, Board of Regents

Request for Proposal for Financial Advisor

PURPOSE

The Texas A&M University System ("the A&M System") is requesting proposals from firms to provide financial advisory services related to the issuance of debt and arbitrage matters.

BACKGROUND OF THE TEXAS A&M UNIVERSITY SYSTEM

The A&M System comprises nine universities, seven state agencies, and a health science center in Texas. Public bond issuance is conducted under two main programs and is rated by at least two major rating agencies. Bonds are issued under authority granted to the A&M System in Article VIII, §18 of the Texas Constitution (Permanent University Fund). The Permanent University Fund utilizes a subordinate lien variable rate demand bond program in commercial paper mode. This program, called the flexible rate note program, has an authorized limit of \$125 million and is frequently used to finance capital improvement needs of the A&M System. Flexible rate notes are normally issued once or twice each year. Currently, \$5 million is issued and outstanding. Current and advance refunding of Permanent University Fund bonds is conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, Texas Education Code and Texas Civil Statutes, Articles 717k and 717q, and other applicable laws, the A&M System also issues revenue bonds for capital improvements. The A&M System employs a revenue debt program, which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). A commercial paper program is used for interim financing with long-term fixed rate bonds sold to provide more permanent financing. The commercial paper program is presently authorized up to \$200 million. Currently, \$29.2 million is issued and outstanding. Current and advance refunding of bonds and escrow restructures of previously defeased bonds, based on market opportunities, may be expected. Evaluation of refunding opportunities presented to the A&M System and developing management strategies for the conduct of the debt program require a close working relationship with the Financial Advisor.

TIME SCHEDULE

Two (2) copies of your proposal must be submitted by June 14, 2006 to:

Ms. Maria L. Robinson

Director of Treasury Services

The Texas A&M University System

200 Technology Way, Suite 1120

College Station, Texas 77845-3424

An authorized representative of the firm must execute the submitted proposal. Proposals must be accurate and include complete information as required by this request for proposal (RFP). Oral instructions or offers will not be considered. Submitted proposals will be reviewed by The Texas A&M University System. After the review, certain persons who have responded to the RFP may be requested to answer questions or make further presentations. The decision naming a Financial Advisor will be made on or before June 30, 2006. All respondents to this RFP will be notified in writing of the A&M System's decision.

Information may be obtained by calling Maria L. Robinson or Gregory R. Anderson at (979) 458-6330.

BASIS OF AWARD

The Texas A&M University System will make the selection for Financial Advisor based upon demonstrated competence, experience, and qualifications as well as the reasonableness of the proposed fee for services. The A&M System will give first consideration to firms whose principal place of business is located in Texas and to those firms with previous experience specifically related to college or university systems.

The A&M System reserves the right to negotiate individual elements of the Financial Advisor's proposal and to reject any and all proposals.

SCOPE OF SERVICES

The Financial Advisor is to be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds, notes, and commercial paper. Also, the Financial Advisor will be responsible for advising the A&M System as related to arbitrage issues as well as performing necessary arbitrage calculations. The contract term will be negotiated with the selected Financial Advisor in accordance with State regulations and System policy.

DESCRIPTION OF SERVICES

The Financial Advisor will perform the following services:

1. Consult with A&M System staff, bond counsel, and others to schedule and facilitate the authorization, sale, and delivery of bonds, notes, and commercial paper.
2. Assist the A&M System in developing and/or revising policies related to the issuance of debt.
3. Advise the A&M System on the feasibility of financings and the proper structure to insure the most advantageous issuance and to achieve the lowest cost to the A&M System, while meeting special requirements of tuition revenue bond projects and other capital improvement projects.
4. Prepare preliminary and final Official Statements, Notice of Sale and Bidding Instructions, and Office Bid forms; print such documents; and deliver such documents as appropriate.
5. Assist the A&M System bond counsel with the preparation of a bond resolution and other proceedings by performing and providing calculations related to the authorization, sale, and delivery of bonds, notes, and commercial paper.
6. Advise the A&M System of current market conditions, upcoming bond issues, economic data, and other information which may affect interest rates or bidding conditions to assist in the determination of a sale date for bonds, notes, or commercial paper.
7. Communicate with and make presentations to nationally recognized rating agencies along with A&M System staff to achieve favorable ratings on bonds to be issued and previously issued bonds.
8. Assist the A&M System staff in the evaluation of bids for competitive issues to include checking the bids for accuracy, providing an evaluation of bids, and recommending the best bid.
9. Compile a list of qualified underwriters for a negotiated sale to include evaluating presentations made by such underwriters, drafting a request for information (if needed), and sharing other information that will assist the A&M System Staff in choosing an underwriter or underwriting team.
10. Handle the bidding process for paying agent and escrow agent services for bond issues.
11. Pay debt issuance costs from debt proceeds allocated for that purpose as approved by the A&M System. Provide an accounting of issuance costs and return unused debt proceeds.

12. Attend meetings with the A&M System staff, the Board of Regents, the Texas Bond Review Board, rating agencies, or others as requested.

The Financial Advisor will be paid for its services on a per bond price basis. There will be no additional compensation for routine consultations on matters related to debt management including, but not limited to, rating agency and dealer relationships, paying agent relationships, comparative bond issue data, market trends and conditions, and special legislation. The Financial Advisor will be reimbursed for reasonable out-of-pocket expenses associated with the issuance of debt, subject to the approval of representatives of the A&M System. Payment will be made from debt proceeds at the time of settlement. Charges related to arbitrage calculations will be paid separately upon completion of the calculations.

RFP SUBMISSIONS

It is recommended that your proposal include the following:

1. Provide a brief description of your firm, its history, and general experience.
2. List previous financial advisor or financial consultant experience within the State of Texas, with particular emphasis on Texas systems and university issues. Indicate in what capacity your firm served.
3. Name the individuals and provide resumes for those individuals who would be assigned to act as Financial Advisor(s) to the A&M System. Please indicate the role the individuals assumed in Financial Advisor relationships. Indicate their particular expertise and how it would benefit the A&M System.
4. Outline of the firm's general experience during the past five years with the major rating agencies.
5. Include the financial advisory fee based on a per \$1,000 debt basis. Also include other forms and amounts of compensation with an explanation of the charges, if applicable.
6. Discuss the management philosophy of the firm as it relates to the control of fees and expenses and allowances for non-billable time.
7. Discuss the firm's experience as related to arbitrage calculations and issues.
8. Provide any other information about the firm that you feel is relevant to the consideration of your firm being chosen as Financial Advisor.

COST INCURRED IN RESPONDING

All costs directly or indirectly related to preparation of a response to this RFP or any presentations required to supplement and/or clarify the RFP which may be required by the A&M System shall be the sole responsibility of your firm.

RELEASE OF INFORMATION

Information submitted relative to this request shall not be released by the A&M System during the proposal evaluation process or prior to contract award.

OPEN RECORDS

All proposals shall be deemed, once submitted, to be the property of The Texas A&M University System and subject to the Public Information Act, Chapter 552 of the Texas Government Code.

TRD-200602476

Vickie Burt Spillers

Executive Secretary to the Board

Texas A&M University, Board of Regents

Filed: May 3, 2006

Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

In the April 28, 2006 issue of the *Texas Register* (31 TexReg 3646), the Texas Department of Transportation (TxDOT) published an Aviation Division - Request for Proposal for Professional Services. The type of form available from TxDOT has been clarified. The following public notice is re-published with the clarification.

The City of Marfa, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: The City of Marfa, Marfa Municipal Airport. TxDOT CSJ No. 0624MARFA. Scope: Engineering and design services for the reconstruction of a portion of Taxiway B and to create a Terminal Area Layout Update. Future work in the next five years may include construction of a hangar access taxiway and other elements as needed for the Marfa Municipal Airport.

The HUB goal is set at 0%. TxDOT Project Manager is Sandra Gaither.

Interested firms shall utilize the Form AVN-550, titled "Professional Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address www.dot.state.tx.us/business/avnconsultinfo.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 6, 2006, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of TxDOT Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each.

The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Sandra Gaither, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200602414

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 1, 2006

Public Hearing Notice - Household Goods Carrier's Vehicle Liability Insurance Requirements

The Texas Department of Transportation (department) will conduct a public hearing to receive comments concerning changes to the minimum vehicle liability insurance requirements for motor vehicles with a gross weight under 26,000 pounds that are used to transport household goods for compensation. The department will use the information obtained during the hearing to propose amendments to 43 TAC §18.16, Insurance Requirements.

The public hearing will be held on Tuesday, May 23, 2006, at 9:00 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 E. 11th Street, Austin, Texas. The hearing will be held in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments or testimony to the issue will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly-held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 E. 11th St., Austin, Texas 78701-2383, (512) 463-8588, at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted to the Texas Department of Transportation, Attention: Carol Davis, Director, Motor Carrier Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on Friday, May 26, 2006.

TRD-200602439

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 2, 2006

Request for Proposal - Private Consultant Services

The Texas Department of Transportation (TxDOT) announces a Request for Proposal (RFP) for private consultant services pursuant to Government Code, Chapter 2254, Subchapter B. The term of the contract will be from project initiation to approximately 3 years later. The Finance Division (division) of TxDOT will administer the contract. The RFP will be released on May 12, 2006 and is contingent upon the finding of fact from the Governor's Office.

Purpose: The department expects to enter into transportation project development agreements over the course of the next three to five years. The project delivery methods will likely include comprehensive development agreements and other public/private partnerships. The department requires advice in determining and evaluating the appropriate types and levels of insurance coverage associated with the development of these transportation projects (including, but not limited to, highway, toll roads, transit, rail, intermodal, and other related transportation facilities) through these and other project delivery methods that may be proposed. There will be multiple projects, each with a separate development schedule, for which the department will seek advice on insurance matters. The types of insurance coverage for each project are expected to include, at a minimum, builder's risk and casualty, commercial general liability, automobile liability, pollution liability, professional liability, worker's compensation, fidelity and crime, marine cargo, and business interruption.

Eligible Applicants: Eligible applicants include, but are not limited to, insurance advisors that provide private consulting services.

Program Goal: The completion of a report that documents insurance requirements for comprehensive development agreements and other public private partnerships.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the division will evaluate the proposals as to the private consultant's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: TxDOT must receive proposals prepared according to instructions in the RFP package at or before June 12, 2006, 5:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to José Hernández, Texas Department of Transportation, Finance Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone (512) 463-4328. Fax (512) 936-2727. Copies will also be available on TxDOT's Finance Division web page at <http://www.dot.state.tx.us/fin/contract/request.htm> or <http://www.dot.state.tx.us>, Select About TxDOT, Divisions & Offices, Finance Division, Request for Proposals/Qualifications.

TRD-200602440

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 2, 2006

The University of Texas System

Request for Applications

The office of the Texas Regional Collaboratives at The University of Texas at Austin requests grant applications to establish Regional Collaboratives for Excellence in Mathematics Teaching across Texas. This request is filed under the provisions of *Texas Government Code*, Chapter 2254. State agencies and others in Texas who are poised to provide science and mathematics professional development to teachers are invited to apply for one of approximately twenty grants in the amount of \$200,000. Applications will be reviewed based on the criteria specified in the Request for Application (RFA). The RFA, along with all necessary forms, are available for download at http://ci06.edb.utexas.edu/trc/rfa4_06.html

Applicants will be notified of award status no later than June 30, 2006.

Awards will be distributed by means of sub award through The University of Texas at Austin.

Application due date: May 26, 2006

Award amount: \$200,000

Program period: July 1, 2006 - July 31, 2007

Approximate number of grants available: 20

Questions regarding the RFA may be directed to:

Carol L. Fletcher, Ph.D.

Project Manager Texas Regional Collaboratives-The University of Texas at Austin

Website: www.theTRC.org

Phone: (512) 232-5690

TRD-200602433

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: May 2, 2006

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).